



Item 1 – Daniel Dansie, representing Orion Property Holdings LLC., is appealing the denial of business license 24-10 which would have allowed for commercial uses in the Stillwater Lodge and the associated parking required on the off-site parcel known as super pad parcel 11.

Project: DEV-9317 Orion Jordanelle Property Holdings	Applicant: Daniel Dansie
Appeal of business license 24-10	Property Address: 9832 N Jordanelle Parkway
Meeting Date: 18 July 2024	Parcel No(s): 00-0020-3979, OWC-0027-P-024-024
Report Date: 11 July 2024	Zoning Designation: JBOZ
Report Author: Doug Smith, Planner	Acreage: 2.51
Council Action Required: No	Density: 17,900 sf mixed use and necessary parking
Type of Action: Quasi-Judicial	Code Section: 16.33.13 (parking code)
Current Legal Use: Parking parcel and mixed use	

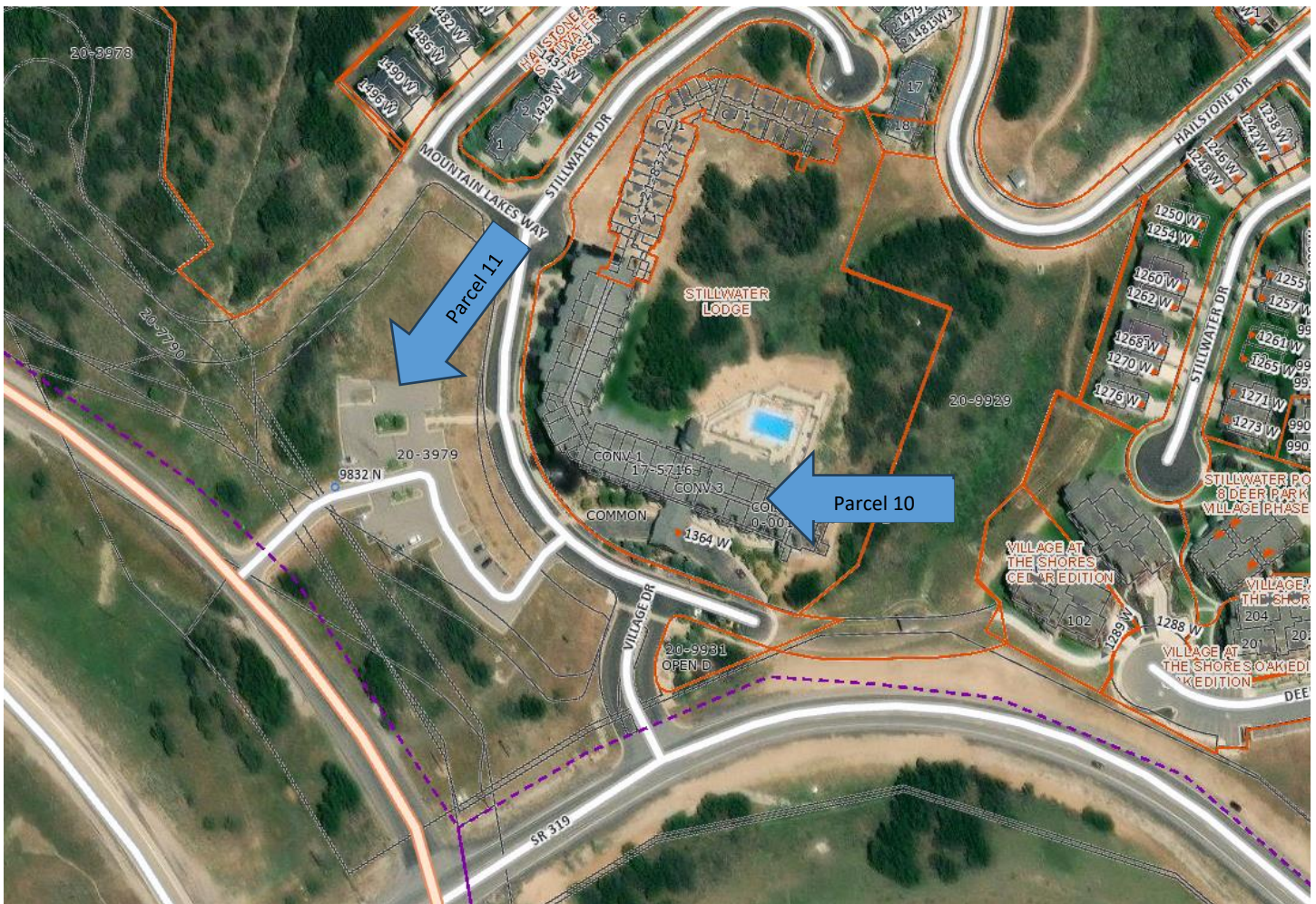
DETERMINATION ISSUE

Whether the staff erred in denying business license 24-10 for the proposed commercial uses in the lodge due to the vague parking easement that allows for an undetermined number of parking spaces on an off-site property not owned by the applicant.

RECOMMENDATION

Based on the analysis, conclusions and findings in this staff report, Planning Staff is of the opinion that the staff did not err in the denial of the business license. The parking easement is ambiguous in its scope and the off-site parcel has a master plan approval allowing uses that require their own associated parking. Therefore, it is recommended that the Appeals Hearing Officer DENY the proposed appeal request based on the findings included in the staff report.

Appeals Hearing Officer Staff Report



BACKGROUND

The applicant is appealing the staff decision that denied business license (24-10) applied for by Orion Holdings LLC., on January 31, 2024. The Stillwater Lodge is on the east side of the Mayflower interchange and north of State Highway 319. Orion Holdings are the owners of certain commercial spaces within the Stillwater Lodge which is adjacent and to the east of the off-site parking parcel. The off-site parking parcel is referred to as Super pad parcel 11. The Stillwater Lodge property is referred to as super pad parcel 10. The “parking” parcel, super pad parcel 11, is parcel 20-3979 (as shown on the above vicinity map) which is 2.51 acres and adjacent and to the west of the lodge. The permit was denied, in part, due to the vague language in the easement that does not specify numbers or area for parking. Super pad parcel 11 also has its own parking needs due the approved and recoded master plan that allows for 17,900 square feet of mixed commercial approved as part of the master plan.

The Stillwater lodge was approved as part of a larger master plan that was recorded on March 15, 2000. The lodge and the surrounding master plan approved and recorded at the same time includes 12 development pods with a total of 186.32 ERU’s (equivalent development units).

There have been a number of letters and correspondence between the applicant and County staff. Former planning department employee, Nathan Rosvall, who did the initial review of the business license application stated in a March

6,2024 letter (March 6 LTR), instead of denying the application, pointed out the deficiencies in the application, and invited the applicant to fix those deficiencies. Part of the March 6 letter states:

In conclusion, I do not have enough information to approve this Business License application at this time. If you can provide sufficient evidence to support the scope of the parking easement, where within Super Pad Parcel No. 10 that the Uses are/will be located, and verification of accurate square footages in compliance with the approved plat and applicable code requirements, I will be able to provide an approval.

On April 21st the applicant's attorney requested a formal denial of the business license which was provided in a letter dated May 7, 2024. The appeal application was accepted as complete on May 21, 2024.

KEY ISSUES TO CONSIDER

- Does the parking easement provide sufficient scope to determine if the County is required to allow Super Pad parcel 10 to use super parcel 11 for all the required parking?
- Does the approval of a master plan allowing commercial uses on super pad parcel 11 and the associated required parking affect parking on the site?
- Should the County be determining the extent of an easement recorded in private CC&R's that the County is not a party to and did not participate in the language of the parking easement?

SEQUENCE OF MAJOR EVENTS:

- The Stillwater master plan was recorded on March 15, 2000.
- The Master CC& R's were recorded November 2003 which included the parking easement language for parking on Super pad parcel 11.
- December 26, 2017, Interim parking agreement due to disagreement regarding the parking easement.
- August 17, 2020, expired (April 2019) interim parking agreement was recorded due to disagreement over the parking easement.
- Richard Rapp, involved with Super pad parcel 11, claims in an August 11, 2022, public hearing regarding a proposed plat amendment on Super pad 11, that "the parking issue with the lot has never been resolved," and "what has been put forth in parking in the lot is just not acceptable."
- In the June 8, 2023, approval of the final site plan for pods 10B and 10C, staff noted that if more intense uses are added inside of the commercial area, additional parking requirements will likely need to be met, and a condition was adopted by the Planning Commission to that effect.
- In the June 8, 2023, approval of the final site plan for pods 10B and 10C, the Planning Commission found that the project is providing 178 parking stalls in the underground parking garage, and the condominium hotel requires 171 parking stalls.
- January 31, 2024, application for business license 24-10.
- January 31, 2024, letter by applicant's attorney stating that parking has been provided.
- March 6, 2024, letter by staff planner, Nathan Rosvall, pointed out the deficiencies of the application and asked for more information.
- April 21, 2024, request by applicant's attorney for a formal denial of the business license (24-10).
- May 7, 2014, a formal denial letter was sent by Doug Smith, Planning Director.
- May 23, 2024, application to appeal the denial of the business license.

STAFF ANALYSIS

– APPEAL PROCEDURE –

Section 2.02.02(G,1) Appeals from Land Use Decisions: The applicant or any adversely affected party may appeal a land use decision or final administrative decision applying the Land Use and Development Code by alleging that there is an error in any order, requirement, decision or determination made by a county official. Appeals of land use decisions, final administrative decisions, or enforcement actions applying Land Use and Development Code shall be filed in the office of the Planning Department within ten (10) days of the date the county official issues the administrative decision. The person or entity making the appeal has the burden of proving that an error has been made.

Applicants submitting an appeal, unlike a variance, must prove that there was an error made by staff in the denial of the administrative application which in this case is the business license.

– WHAT IS BEING APPEALED –

The business license was denied based on two issues which are:

1. The parking calculations are based on the square footage of the uses provided by the applicant. There is a discrepancy between the square footages provided and the recorded plat; and
2. The easement language is too vague to determine that the 77+/- stalls required for the commercial uses proposed in the lodge can be accommodated on super pad parcel 11. If allowed this would take the majority of the stalls in Super Pad parcel 11 and therefore would not allow for the stalls required for the commercial uses approved on super pad parcel 11. According to the approved master plan there are approximately 90 stalls required for the approved commercial on super pad parcel 11.

The Appeal states three reasons the denial of the business license should be reversed (May 16, 2024, letter page 5, last paragraph):

1. The Parking Easement provides parking as required under County Code § 16.33.04 and the Planning Department's hypothetical concerns are not a legitimate basis to disregard the Parking Easement.
2. The Planning Commission's (applicant means planning department) requirement that the Developer provide further evidence demonstrating that no parties will challenge the Parking easement is unreasonable and therefore violates County Code § 11.01.06.
3. The County's conclusion that it could not determine the square footage and locations associated with the uses contemplated in the Application is not supported in the record, because the records provided were sufficient for the County to do so, and, alternatively, the County did in fact identify some relevant square footage.

These three items will be addressed separately below.

1. THE APPLICANT HAS FAILED TO MEET THEIR BURDEN OF PROVING THEY MEET THE PARKING REQUIREMENTS OF WCC § 16.33.04

A property owner is required to prove they have adequate parking at the time a use is established, and that parking is required to continue in perpetuity.

16.33.04: OFF STREET PARKING REQUIRED

At the time of the establishment of any use or at the time any building, structure, or improvement is enlarged or constructed, minimum off-street parking shall be provided and permanently maintained, with adequate provisions for ingress or egress by standard sized automobiles as provided and described in this chapter. The actual number of spaces and whether such spaces must be covered are determined using the parking computation matrix in this chapter.

The required off-street parking facilities shall be a continuing obligation of the property owner so long as the use requiring the vehicle parking or vehicle loading facilities continues. It shall be unlawful for any owner of any building or use to discontinue with the required vehicle parking facilities.

By approving the business license, the county will be acknowledging that the uses applied for in the business license meet the requirements of the applicable zoning code. Specifically, that the off-street parking requirements are provided and will be permanently maintained. The Applicant has failed to meet this burden.

The parking easement is recorded as part of the Amended and Restated Master Declaration of covenants, conditions and restrictions (CC&R's) for Stillwater recorded on November 5, 2003, as entry number 264939 (see exhibit H and below). The easement in section 6.3.2 of the CC&R's allows for the commercial uses in Super Pad parcel 10 to use parking on an off-site parcel known as super pad parcel 11 owned by the Melvin G. Flinders Trust. The entire language of the easement in section 6.3.2 is below.

6.3.2 Easements for Parking. Temporary Guest or recreational parking shall be permitted within the Common Elements only within spaces and areas clearly marked for this purpose. Signs or markings on the paved area shall show spaces. The Master Association is hereby empowered to establish "parking" and "no parking" areas within the Common Elements, as well as to enforce these parking limitations by all means lawful for such enforcement including the removal of any violating vehicle by those so empowered. In addition, an easement for shared parking on Super Pad Parcel No. 11 is hereby reserved for the benefit of the mixed-use Commercial and Residential condominium project that Stillwater Lodge has or will construct on Super Pad Parcel No. 10, as further described in that certain Declaration of Condominium defined in Recital H above. Such shared parking easement exists in order to permit the project known as The Lodge at Stillwater to meet applicable parking requirements as set forth in the Development Documents. As set forth in the Declaration of Condominium, Super Pad

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Parcels Nos. 10B and 10C (which constitute portions of Super Pad Parcel No. 10) are subject to Stillwater Lodge's right to withdraw. Declarant hereby reserves the right, for the benefit of Super Pad Parcel No. 11, to abandon and terminate such shared parking easement encumbering Super Pad Parcel No. 11 in the event Stillwater Lodge exercises its right to withdraw Super Pad Parcel Nos. 10B or 10C, thereby vacating the need for such additional parking requirements as set forth in the Development Documents. The Master Association may specifically assess the Neighborhood Association for The Lodge at Stillwater for the benefit of such Neighborhood Association, if any, or the Owners of Commercial Space to be constructed on Super Pad Parcel No. 11, for its allocable share of maintaining, repairing and replacing the parking areas used by such Neighborhood Association pursuant to this provision, including without limitation its share of the costs associated with lighting and snow removal.

The language states that, "Such shared parking easement exists in order to permit the project known as the Lodge at Stillwater to meet applicable parking requirements as set forth in the Development Documents." The "Development Documents" are defined in the CC&R's definitions section as follows:

1.24 “Development Documents” shall collectively mean the conditions of the Final Approval set forth in the official minutes and record of the Wasatch County Planning Commission and Wasatch County Legislative Body, the Master Plan and the Development Agreement.

The minutes of the planning Commission meeting and the County Council are attached as (exhibit L). The County is not aware of a development agreement recorded for the project. The Master Plan is attached as (exhibit E). Reading all the minutes for the development shows that parking was discussed at length when the master plan was considered and approved. However, the minutes included in what is referred to as the “development documents” do not provide clear information. It is interesting to note that the final minutes from the planning commission show a notation for tandem condo parking and that garbage cans should not take up any off-street parking stalls.

It appears that the parking requirement on super pad parcel 11 has been contested for a number of years by the owner of super pad parcel 11. This is confirmed by the interim parking agreement recorded with entry number 482835 (exhibit G) on August 17, 2020. This agreement was already expired in April of 2019. There was also a prior interim parking agreement confirmed in an e-mail dated December 26, 2017. All interim parking agreements have expired.

It appears that the several interim parking agreements had the intent that the two super pad parcel owners work out the parking issues. It also appears that the parking issues were never resolved. The recorded interim agreement (Exhibit F) whereas language states in part,

WHEREAS, a parking lot presently exists on Pad 11 (the Parking Lot); and

WHEREAS, the Parties disagree concerning their respective rights and obligations with respect to the Parking Easement; and

WHEREAS, although discussions to date have not yielded a resolution, the Parties have agreed to continue discussions and wish to avoid any misunderstanding or controversy concerning the Parking Lot during the discussion period; and

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WHEREAS, the Parties agree it makes sense to enter a temporary agreement regarding use of the Parking Lot that will allow the Parties time to explore development possibilities for their properties, and their associated parking needs, before further addressing their disagreement.

As per the last whereas the parties agreed that it made sense to have the parties take time to explore the development possibilities for their properties and the parking needs.

It is significant that the interim parking agreement was actually expired as of April 30, 2019, when it was recorded on August 17, 2020, because this shows that the parties were still thinking about the parking easement issues after the interim parking agreement was recorded, but were not able to enter into a permanent agreement to clarify the scope of the parking easement.

In case more current evidence is desired, there is additional evidence of an actual dispute. The August 11, 2022, minutes of a Planning Commission meeting state:

Richard Rapp, involved with Pod 11 that has the parking easement, addressed the Wasatch County Planning Commission and has a concern about this because of a project that I will be developing on that site with several clients. “The parking issue with the lot has never been resolved to how much is really in that easement that was put forth back in 1999. What has been put forth with regard to parking in the lot is just not acceptable. Also not opposed to this development process. I oppose them using that lot for their parking requirement if that is what is being represented.”

The heart of the concern of Mr. Rapp is “[it] has never been resolved how much is really in that easement . . .” The scope of the easement is unclear. The Applicant’s answer to this is “that the full scope of the Parking Easement will not be determined until Super Pad Parcel No. 10 is fully built out and all potential approvals have been granted.” Appeal, Pg. 5. This is not an answer. Such a nebulous position on the scope of an easement on Super Pad Parcel 11 that has been granted development approvals through the same master plan as Super Pad Parcel 10, and which approvals are probably in conflict with the scope of the easement the Applicant claims a right to, is not reasonable, as will be further explained below.

– APPROVED MASTER PLAN FOR SUPER PAD PARCEL 11 AND PARKING REQUIREMENTS–

The first paragraph of the March 6 LTR explains that the parking needed for the proposed commercial uses in the lodge would be 77 stalls based on the Application and Wasatch County Code §16.33.13. Super pad 11 has an approved and recorded “Stillwater Overall Boundary/ Land Use Pod Exhibit Map” that includes on sheet 3 a Master Plan (entry 222528, see exhibits D and E) that specifies, by use, the commercial square footages on Super Pad 11. The commercial uses, based on the square footages in the recorded master plan, requires at least 90 parking stalls solely for what is allowed on Super Pad parcel 11 under the approved Master Plan. The aerial photo of the parking on Super Pad 11 attached to Mr. Dansie’s January 31, 2024, letter (Exhibit I) appears to show 89 spaces, which is not enough to meet the parking requirements for the uses previously approved on Super Pad parcel 11. A July 2002 aerial photo of the parking lot with stalls shown shows approximately 67 stalls (see exhibit L). Super Pad parcel 11 doesn’t have the parking necessary for the commercial approved on Super pad parcel 11 let alone what is being requested for super pad parcel 10. Based on the approved Master Plan shown in Exhibits D and E, there is additional parking yet to be developed on super pad parcel 11. There is an estimate that the parking when fully developed may have a total of around 100 stalls. For super pad parcel 11 to be able to accommodate the commercial uses in super pad parcel 10 and super pad parcel 11, which may be less than the scope of the easement the Applicant claims, there would need to be a total of at least 167 parking spaces which cannot be provided even after build out.

The following are excerpts from the letter written by the County Attorney on March 6, 2024 (for the full letter see exhibit J).

In a letter provided by the applicant (see exhibit I), Orion Jordanelle Property Holdings, LLC (“Orion”) takes the position that the Master Declaration (“Declaration”), Section 6.3.2, reserves a parking easement on Super Pad 11 for the benefit of Super Pad Parcel 10:

[A]n easement for shared parking on Super Pad Parcel No. 11 is hereby reserved for the benefit of the mixed-use Commercial and Residential condominium project that Stillwater Lodge has or will construct on Super Pad Parcel No. 10 Such shared parking easement exists in order to permit [the Lodge] to meet applicable parking requirements as set forth in the Development Documents. (Letter pg. 3)

Orion acknowledges that “the precise number of spaces included in the Parking Easement is not expressly stated in the Amended Master Declaration. . . .” (Letter pg. 4). Orion further acknowledges the parking easement, as stated in the Declaration, is “flexible in scope. . . .” (Letter pg. 3).

Orion offers various additional evidences of the existence of, and the scope of the easement. They point to Section 2.2.10 to show how the Declaration describes the uses on Super Pad 10. (Letter pg. 2). They cite the Wasatch County Code Section 16.33.13 as evidence for the number of stalls that would be sufficient to meet the parking requirements of Super Pad 10. (Letter pg. 4). They show an aerial photo of Super Pad 11 with numbers written on it, probably number of stalls, which they assert shows “there is more than enough existing paved and painted parking” on Super Pad 11 to meet the County requirements for the Commercial Parcels on Super Pad 10. (Letter pgs. 4, 6). They further assert that Super Pad 11 has “additional undeveloped/ unpaved areas” that could be used for parking for Super Pad 10 (Letter pg. 4). They show a picture of an existing *No Parking* sign on Super Pad 11, and assert this as evidence that “it is clearly understood by the owners of Super Pad Parcel No. 11 that the Parking Easement exists. . . .” (Letter pgs. 4, 7).

While offering various evidences of the existence and scope of the easement, Orion asserts that it could require additional parking to be built on Super Pad 11, or “require that it be developed.” (Letter pg. 4). Ultimately, the Orion turns to the County as the entity that defines the scope of the parking easement:

“[The] express purpose of this reservation is to enable the Lodge ‘to meet applicable parking requirements set forth in’ the various development documents applicable to the Project—however many parking spaces that may be, as determined by the County.” (Letter pg. 3).

On its face, it appears that the Amended Master Declaration could be used to create an express easement, and may have created a parking easement. *Kiernan Family Draper, LLC v. Hidden Valley Health Ctrs.*, 2021 UT 54, ¶ 41. Easements created by CCRs are generally interpreted using the same rules of construction used to interpret contracts. *Equine Holdings LLC v. Auburn Woods LLC*, 2021 UT App 14, ¶ 21.

Orion Jordanelle Property Holdings, LLC takes the position that “there are no limitations or maximum numbers placed on the Parking Easement.” (Letter pg. 5). Although the County evaluates compliance with the standards of applicable law in evaluating the business license, the result of Orion’s position is that whatever the County determines the parking requirement to be for the proposed business license, in addition to any other parking requirements for approved uses on Super Pad 10, that is added to, or inclusive of, the scope of Orion’s easement on Super Pad 11.

The number of spaces granted by the Parking Easement is defined by approvals for Lodge received from the County. (Letter pg. 5).

The Applicant bears the burden of proving compliance with the standards of the code. The County is not comfortable with Orion’s interpretation of the scope of the parking easement. Orion indicates that by the County taking a position on the parking standards required for a given application on Super Pad 10, by taking that position, the scope of an otherwise ambiguous parking easement against Super Pad 11 provides for adequate parking to accommodate the County’s position, whatever that position is. Orion’s position on the scope of the easement would place the County in the center of a dispute between Orion and anyone with an interest in Super Pad 11 that wanted to use the parcel in a manner that would conflict with Orion’s using the parcel for parking.

As shown in the letter from Planning that this letter is attached to, County records show persons with an interest in Super Pad 11 have questioned the easement as presented by Orion in the Letter, and previous approvals show that Super Pad 11 was previously approved to be used for more than simply providing parking for Super Pad 10. This appears to be at odds with Orion’s position that there are no limitations or maximum numbers placed on the Parking Easement burdening Super Pad 11. There are a number of challenges that might be asserted by a person interested in claiming that there was no parking easement burdening Super Pad 11, or that

the scope of the parking easement was more limited than that claimed by Orion. A non-exhaustive list of possible challenges include:

- Statute of Limitations causes no remedies for Orion. *Kiernan Family Draper, LLC v. Hidden Valley Health Ctrs.*, 2021 UT 54.
- Ambiguous express easement terms lead to the court interpreting the easement pursuant to the intention of the parties, which raises many possible factual issues which could be resolved by the court in unknown ways. *Equine Holdings LLC v. Auburn Woods LLC*, 2021 UT App 14.
- Mutual mistake is claimed in the express terms of the easement causing the court to consider whether it should reform the Declaration to reflect the intention of the parties, which raises many possible factual issues which could be resolved by the court in unknown ways. *Equine Holdings LLC v. Auburn Woods LLC*, 2021 UT App 14.
- Conduct over the years show that applying the express terms of the easement would substantially change the character of the neighborhood, leading the court to declare the easement terms unenforceable. *Swenson v. Erickson*, 2000 UT 16.
- Orion's position on the scope of the easement so completely burdens Super Pad 11, that the easement is void as a matter of law. *The View Condo. Owners Assn v. MSICO, L.L.C.*, 90 P.3d 1042 (overturned by *View Condo. Owners Assn v. MSICO, L.L.C.*, 2005 UT 91).
- By failing to indicate how many parking spaces are reserved, where they were to be located, and how much of the parcel is to be used for parking, that the easement is too vague to be enforced. *Holter Lakeshores Homeowners Ass'n v. Thurston*, 2009 MT 146, ¶ 25.

In making this evaluation, I am not taking a position on the merits of any of these possible claims, but I do take the position for the limited purpose of reviewing this business license application, that there are a number of possible legal challenges to Orion's position on the scope and existence of the parking easement that would probably not be deemed frivolous by the court, and could be at odds with Orion's position on the scope of the parking easement. Clarification of the existence and terms of the parking easement would be beneficial for the County in evaluating future development applications and business license applications involving Super Pads 10 and 11. They are also necessary to meet the applicant's burden of demonstrating adequate parking for the proposed businesses. This burden could be met in various ways, including through the courts, through a modification of the terms of the Declaration in accordance with applicable law, or perhaps through a written statement of the owner of Super Pad 11, agreeing to or authorizing the use of Super Pad 11 in a certain manner by the Owner(s) of Super Pad 10. Additional existing evidence defining the scope and existence of the easement might be provided that would be sufficient, but has not been submitted with the pending application. Parking might also be provided other ways not contemplated or demonstrated thus far. For purposes of this business license application, I recommend that planning take the position that the applicant needs to provide additional evidence to support the right to utilize adequate parking for the proposed businesses on Super Pad 10.

– CONCLUSIONS ON THE PARKING EASEMENT–

- As argued in the Orion Appeal, there is no dispute that the parking easement exists. The primary evidence for this is the Master Declaration and interim parking agreements but a picture of a no parking sign, and claims regarding the historic use of a parking lot on Super Pad 11 by Super pad 10 are also included.
- The interim parking agreements show that the parking on Super Pad 11 has been a matter of dispute and has not been resolved for many years.
- The parking easement does not specify the number of stalls, location or area on super pad parcel 11.

- The Applicant claims that there are 94 built stalls at this time (see exhibit J).
- A 2002 aerial with designated parking stalls appears to have approximately 67 stalls (see exhibit M), which is not enough to provide the parking for the uses proposed in super pad parcel 10 which could require 77 stalls, depending on the exact use and square footage of the commercial uses in the Lodge.
- Portions of super pad parcel 11 have not been developed and parking could be expanded. The estimate of parking numbers with the parking lot fully built is approximately 100 stalls.
- Orion asserts that they could force the owners of super pad parcel 11 to develop the undeveloped portion of the property to provide the needed parking.
- The approved master plan (see exhibit E) allows for 17,900 square feet of mixed-use commercial on super pad parcel 11 which requires approximately 90 stalls.
- The proposed and approved commercial uses on super pad parcels 10 and 11 would require approximately 167 parking stalls which cannot be obtained even after build out, if the business license were approved, and Super Pad Parcel 11 were to develop in accordance with the recorded Master Plan (Exhibits E & F).
- What the CC&R's refer to as the "Development documents" do not sufficiently clarify the scope of what parking is allowed on Super Pad Parcel 11.
- The scope of the parking easement is disputed, as evidenced in minutes of the County Planning Commission, and the recorded Interim Parking Easement.
- The County Attorney has opined on multiple legal challenges that could be brought to challenge the Applicants position on the scope of the Parking Easement.
- Under WCC 16.33.04, the Applicant is required to provide proof of parking that will be permanently maintained and will continue for as long as the use will continue.
- The burden is not on the county to disprove the parking easement.
- There is significant evidence of a dispute between the owners of Super Pad 10 and 11 regarding the scope of the parking easement.
- The Applicant has failed to provide proof of parking that will be permanently maintained, or which will continued for as long as the applied for commercial uses could continue.
- The Applicant has failed to meet their burden that the Planning Department erred.

2. The Applicant Has Failed to Comply with County Code § 11.01.06.

The Applicant claims Planning Commission's (I believe the applicant meant to say Planning Department) requirement that the Developer provide further evidence demonstrating that no parties will challenge the Parking easement is unreasonable and therefore violates County Code § 11.01.06. The Applicant has not met the requirements of WCC § 11.01.06, which states:

11.01.06: APPLICATION FOR LICENSE

A. An application for a license shall be in writing on a form approved by the officer. **The application shall show the following with respect to all persons** (excluding shareholders or their equivalent) having a legal or equitable ownership interest in the subject business or activity:

1. Name, address, date of birth and both home and business telephone numbers, including the same information with respect to all partners, officers or directors;
2. **A description of the business, trade, profession, occupation or activity for which a license is requested**, including any assumed or fictitious names which may be used;
3. The address of the property where the subject business, trade, profession, occupation or activity is to be carried on;
4. The state tax number of the subject business, trade, profession, occupation or activity;
5. A statement of all facts necessary to calculate applicable fees; and

B. **Any other information required by this title, by statute, or as reasonably required by the officer.** (Emphasis

Added)

The Planning Department has repeatedly asked for additional information to evaluate the application. As was extensively discussed in Section 1 above, there is an active dispute over the scope of the parking easement. There are several legal theories under which non-frivolous claims could potentially be brought to challenge the scope of the parking easement as represented by the Applicant. There does not need to be an active lawsuit to show a colorable challenge to the parking easement. When there is a known dispute, and there is some evidence giving a possible colorable basis for the legal challenge, it is *reasonable* for the county to require additional evidence clarifying the standards of the code will be met. The applicant has not proven the standards of WCC § 16.33.04 will of can be met.

As will be discussed below, the County has asked for information on the square footage of the commercial businesses. The county does not dispute several efforts have been made to clarify this issue, but the county is left with at least three different possible square footages, a lack of clarity on whether the recorded plat is being complied with, and this creates ambiguity on compliance with other aspects of the County Code.

The Applicant has not proven the county errored in its application of WCC § 11.01.06.

3. The Applicant Has Failed to Provide Consistent Square Footage, As Required to Evaluate Compliance with The Land Use Code, Including Use, Parking, And Consistency with The Recorded Plat.

The Stillwater Lodge was approved as a condo hotel. Square footage is noted on the recorded plat (Exhibit D, entry number 234502). There have been a number of different commercial square footage numbers used. The square footage of the various commercial uses is what is used to determine the parking numbers in accordance with County code 16.33.13. It is the applicant's burden to prove compliance with the applicable zoning ordinances as is necessary for a business license. WCC 11.1.07, 13 & 15. See also Appeal pg. 4. In order to evaluate compliance with the zoning ordinances, it is necessary for the application to provide accurate information. The information provided by the applicant both in the application, and as stated in the May 16, 2024, appeal letter, is inconsistent.

The March 6, 2024, letter from a former Planning staff member, Nathan Rosvall, states that there is a total of 8,055 square feet of commercial based on information that, "was provided by the applicant". A January 31, 2024, letter provided by the applicant's attorney, Dan Dansie, states that, "The amended Master Declaration provided that Super Pad 10 would have up to 7,494 square feet of commercial space."

Staff has added up the total square footage as provided on the recorded plat in the areas provided by the applicant as depicting the commercial areas where the various uses would be located. Based on the plat and adding the number on the plat there is 7,371.1 square feet (Exhibit D and N).

The different square footage numbers are as follows:

- Applicant provided square footage with business license application 8,055
- Applicant's attorney provided square footage 7,494 (based on the amended master declaration)
- Square footage as provided on the plat (entry # 234502) is 7,371.1

The square footage provided by the applicant most likely creates a worst-case scenario. This, however, would only be the case if the square footages of the more intense uses are not enlarged beyond what was represented to Nathan Rosvall by the applicant. In this case the more parking intense uses are the restaurant and the ski club. I am not aware of

a floorplan that that was provided with the business license application for the various uses so there is no way to verify the square footage for the individual uses based on where they are located.

“According to the applicant,” (March 6 letter) the following numbers were provided:

<i>Use</i>	<i>Square footage</i>	<i>Stalls required as per 16.33.13</i>
<i>Restaurant</i>	<i>3,548</i>	<i>36 (1 stall/100 sq. ft.)</i>
<i>Private Ski club</i>	<i>3,427</i>	<i>35 (1 stall /100 sq. ft.)</i>
<i>Retail space</i>	<i>1,080</i>	<i>6 (1 stall per/200 sq. ft.)</i>
<i>total</i>	<i>8,055(7,371 actual)</i>	<i>77 (from March 6th letter)</i>

Conclusion regarding parking numbers – Unless the restaurant or ski club square footage becomes a greater percentage of the total commercial square footage the parking numbers should be a worst-case scenario since the square footage provided in the business license application is greater than what the plat shows. As far as I am aware a floor plan was not provided with the business license application. It cannot be verified what portions of the plat is used for what uses and what those square footages are. The parking calculations based on the March 6th letter requires 77 stalls.

The information provided by the applicant has not been consistent regarding the square footages of the businesses applied for, and information provided is inconsistent with the recorded plat. The business license has been properly denied, and the planning staff has not been provided information from which it can accurately calculate the number of parking stalls required to comply with WCC 16.33.02 et. seq. General Parking Standards.

RECOMMENDED MOTION

Move to **DENY** item 1 consistent with the findings presented in the staff report.

– FINDINGS –

1. The master plan for the Stillwater lodge including super pads 10 and 11 was recorded on March 15, 2000 (entry number 222528)
2. An application for business license 24-10 was applied for on January 31, 2024.
3. The recorded plat shows a total of 7,371.1 square feet of commercial area in Super Pad Parcel 10 (entry 234502).
4. County code requires parking numbers as determined by code section 16.33.13 for uses proposed in the County, and for applicable commercial uses, parking numbers are tied to square footages.
5. A recorded master plan approved Super Pad parcel 11 and, subject to applicable laws, allowed the associated commercial uses and the parking area.
6. The master plan also approved the Stillwater Lodge and the associated commercial uses within the Lodge, subject to compliance with applicable laws.
7. A Google Aerial photo from July 2002 shows approximately 67 parking stalls on super pad parcel 11.
8. The parking lot on Super pad parcel 11 is limited, at build out, to around 90-100 stalls, if the approved master plan is followed.
9. The recorded Amended Master Declaration (# 264939) purports to create an easement in favor of the lodge

on Super pad parcel 11 for parking.

10. The County is not a signatory to the CC&R's or the Master Declaration.
11. The County historically has not reviewed private CC&R's and therefore probably would not have reviewed the easement language that required the parking in the Master Declaration.
12. The CC&R's refer to "development documents" that are minutes of the final planning commission and County Council meetings and the master plan and development agreement. There is no known development agreement. The minutes do not help clarify the scope of the easement.
13. The mixed-use commercial approved on Super Pad parcel 11 alone requires approximately 90 stalls.
14. The commercial uses requested within the lodge in super pad parcel 10 requires approximately 77 parking stalls on super pad parcel 11.
15. The total parking needed for both uses is approximately 167 stalls, leaving a deficit of about 67 stalls.
16. The easement does not specify parking numbers or area allowed for the parking proposed to be used by the lodge.
17. The parking easement has been a point of contention between the owner of super pad 11 and 10 for some years based on several interim agreements that have expired, and the August 11, 2022, minutes of the Planning Commission.
18. Part of the interim agreements states the following, "the parties agree that it makes sense to enter a temporary agreement regarding the use of the parking lot that will allow the parties time to explore development possibilities for their properties and their associated parking needs, before further addressing their disagreement."
19. The county asked, prior to the denial of the business license, for more information regarding the scope of the parking easement, both in association with a June 8, 2023, approval of the final site plan for pods 10B and 10C, and with the current business license application.
20. The County would issue a business license if the standards of the code could be determined to be met, including adequate evidence that the scope of the parking easement were known and the parking requirements for all the uses proposed to use the parking lot in super pad parcel 11 were met in accordance with 16.33.13.
21. To date we have received no indication that the parking easement allows for a specific number of stalls.
22. There is no way for the County to determine that the applicant can or has met the requirement that they meet the off-street parking requirements and that they will be permanently maintained as required in 16.33.04.
23. This matter is due to an easement recorded in the Master Declaration which is a private agreement between the parties and does not include the County.
24. The appeal applicant is demanding the County interpret and potentially enforce a private easement by demanding the county issue a business license for a use which relies on the parking easement to meet the standards of Wasatch County Code.
25. This issue should be resolved by the owners of super pad parcels 10 and 11.
26. The Applicant has provided multiple square footages for the proposed use and has not demonstrated compliance with the recorded Plat for the Square Footage of the Commercial Use.
27. The Applicant has failed to meet its burden of proving the County errored in denying the business license.

POSSIBLE ACTIONS

The following is a list of possible motions the Appeals Hearing Officer can take. If the action taken is inconsistent with the recommended findings listed in the staff report, the Appeals Hearing Officer should state new findings.

1. Approve. This action may be taken if the Appeals Hearing Officer finds that the that the staff did err in the denial of business license 24-10.
2. Deny. This action can be taken if the Appeals Hearing Officer finds that the staff did not err in their denial of business license 24-10. ****This action would be consistent with the staff analysis.****
3. Continue. This action can be taken if the Appeals Hearing Officer needs additional information before making a determination, if there are issues that have not been resolved, or if the application is not complete.

EXHIBITS

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Exhibit N - 'Convertible Space 3' areas of the existing Lodge At Stillwater Amended Plat (Entry # 234502) (Also Exhibit C to Exhibit B March 6 Letter).....	56

Exhibit A – Formal denial of the business license

COUNTY MANAGER

Dustin A. Grabau

COUNTY PLANNERS

Doug G. Smith, Director
Austin Corry, Assistant Director
Anders Bake, Planner
Nathan Rosvall, Planning Tech.



COUNTY COUNCIL

Kendall Crittenden
Steve Farrell
Karl McMillan
Mark Nelson
Spencer Park
Erik Rowland
Luke Searle

May 7, 2024

Orion Jordanelle Property Holdings, LLC
PO Box 13308
Jackson, WY, 83002
justin.martin@orion-companies.com

Re: Final Decision on Business License Application no. 24-10

Mr. Martin,

On Sunday, April 21, 2024 we received an email from your attorney, Dan Dansie (April 21 Email). In part, it stated: "Developer formally requests that the County issue a decision on the application approving the uses requested therein." We are considering this a request for final action on the business license application (24-10). Since you are asking for a final determination, we will not consider any more information from the applicant on the business license application.

Previously, in the March 6, 2024 letter of the Wasatch County Planning Department staff Nathan Rosvall (March 6 LTR), instead of denying the application, pointed out the deficiencies in the application, and invited the applicant to fix those deficiencies. Part of the March 6 letter states:

In conclusion, I do not have enough information to approve this Business License application at this time. If you can provide sufficient evidence to support the scope of the parking easement, where within Super Pad Parcel No. 10 that the Uses are/will be located, and verification of accurate square footages in compliance with the approved plat and applicable code requirements, I will be able to provide an approval.

Mr. Dansie did provide some information in the April 21 Email. He stated that Section 16.33.04 of the WCC "provides that when a use is established or improvements are constructed, 'minimum off-street parking shall be provided and permanently maintained,' consistent with the provisions of the County Code." He cites a January 31, 2024, letter as backing that this requirement was met. This information was already evaluated in the March 6 LTR and its attachments and need not be re-evaluated in this letter.

Mr. Dansie also references the comments of Richard Rapp referenced in the March 6 LTR. Mr. Dansie argues that these comments "cannot serve as a basis for the County to deny the Application when Developer has made a prima facie case that the easement provided for in the master declaration

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satisfies the provisions of the County Code.” He argues that there is no evidence that Mr. Rapp is the owner of Super Pad 11 or has the right to speak for the owner, and that the referenced comments do not demonstrate that he has any “cognizable basis on which to object to the use of the parking easement.”

I noticed that the March 6 LTR referenced the wrong date for the planning commission in which Mr. Rapp spoke. The correct date was August 11, 2022, and those minutes are attached to this letter. The full text of Mr. Rapp’s comments from the minutes are as follows:

Richard Rapp, involved with Pod 11 that has the parking easement, addressed the Wasatch County Planning Commission and has a concern about this because of a project that I will be developing on that site with several clients. The parking issue with the lot has never been resolved to how much is really in that easement that was put forth back in 1999. What has been put forth with regard to parking in the lot is just not acceptable. Also not opposed to this development process. I oppose them using that lot for their parking requirement if that is what is being represented.

In these comments, Mr. Rapp both states that “I will be developing that site [Super Pad 11] with several clients, that “The parking issue with the lot has never been resolved,” and that “What has been put forth with regard to parking in the lot is just not acceptable.” It is not typical for the county to require a person to provide proof of their status as a property owner or as an agent of a property owner to make comments in a public meeting. The concerns that Mr. Rapp raises are similar to the sorts of concerns that the County raises in the March 6 LTR, and its attachments regarding the parking easement, and the fact that these issues were raised demonstrate the County’s concerns over the easement claimed are not just academic – they have been raised in a public meeting by someone purporting to have an interest in developing Super Pad 11.

Mr. Dansie makes no effort to address the additional issues raised in the March 6 LTR, including sufficient evidence to support the scope of the parking easement, where within Super Pad Parcel No. 10 that the Uses are/will be located, and verification of accurate square footages in compliance with the approved plat and applicable code requirements for the necessary parking on super pad 11.

We have been working for some time to understand the parking situation for the Stillwater Lodge, however, to date we cannot determine that you have the legal right to park the needed parking numbers on Super Pad 11. The letter sent from Nathan Rosvall on March 6th outlined the needed parking. We hoped that the letter would initiate a response showing that not only is there a legal right to park on Super Pad 11 but detail about the number of stalls allowed on Super pad 11. This letter does not go into detail on those items because that has already been done in the March 6 LTR.

The business license applied for (24-10) requests approval for a business license for a number of commercial uses inside the lodge. The first paragraph of the March 6 LTR explains that the parking needed for the proposed commercial uses in the lodge is 77 stalls based on the Application and Wasatch County Code §16.33.13. Super pad 11 has an approved and recorded “Stillwater Overall Boundary/ Land Use Pod Exhibit Map” that includes on sheet 3 a Master Plan (entry 222528) that specifies, by use, the commercial square footages on Super Pad 11. The commercial uses, based on the square footages in the recorded master plan, requires at least 90 parking stalls solely for what is allowed on Super Pad 11. The aerial photo of the parking on Super Pad 11 attached to Mr. Dansie’s January 31, 2024 letter appears to

show 89 spaces, which is not enough to meet the parking requirements for the uses previously approved on Super Pad 11.

The primary detail we have received regarding the parking easement is the following:

[A]n easement for shared parking on Super Pad Parcel No. 11 is hereby reserved for the benefit of the mixed-use Commercial and Residential condominium project that Stillwater Lodge has or will construct on Super Pad Parcel No. 10 Such shared parking easement exists in order to permit [the Lodge] to meet applicable parking requirements as set forth in the Development Documents.

For the reasons outlined in the March 6 LTR and its attachments, the county determines this is insufficient evidence to prove the scope of the parking easement on Super Pad 11, and thereby show adequate parking for the 77 stalls required for the Application. The County will not take a position on the above ambiguous parking easement language. The applicant bears the burden of proof that the needed parking is available. That burden has not been met. The county should not be in the middle of a dispute between the owners of Super Pads 10 and 11.

Since you have not provided sufficient evidence to support the scope of the parking easement needed to provide the necessary parking for the business license you are requesting, where within Super Pad Parcel No. 10 that the Uses are/will be located, or verification of accurate square footages in compliance with the approved plat and applicable code requirements, your application is denied.

Sincerely,



Doug Smith

Planning Director

CC: Jon Woodard, Deputy County Attorney
Dan Dansie

Attachments:

March 6 LTR

August 11, 2022 Planning Commission Minutes

Exhibit B – Minutes from August 11, 2022, Planning Commission meeting

17. The proposed alignment, although encroaching on the Highway 40 transportation corridor and impacting more private land in Wasatch County than following the Mona-Bonanza line, will reduce the encroachment on ridgelines.
18. According to the applicant statements, the proposed realignment reduces impact on private property owners outside of Wasatch County.
19. The URMCC and UDWR have provided letters of support for the proposed realignment citing environmental benefits.

Austin Corry then went through the proposed conditions:

1. All issues as noted by the DRC shall be resolved to the satisfaction of the applicable review department prior to the County issuing construction permits.
2. Minor adjustments to the locations of the facilities may be approved by the Planning Director without the need to amend the CUP. If the adjustments cannot be considered minor, a CUP amendment will need to be presented to and approved by the Planning Commission.
3. TransWest shall acquire the legal right to use all necessary private, state, and federal land in Wasatch County prior to commencing construction activities and will provide the Planning Department with proof of legal access. The Conditional Use Permit will not be valid until legal rights are obtained.
4. TransWest will inform the Planning Department of the final alignment and will provide updated design plans prior to construction.
5. Any use for which the CUP is granted must be commenced within three years of the date the BLM issues its Final Notice to Proceed, which grants TransWest permission to begin construction on federal land.

Applicant

Joel Hendrickson, Land Manager for TransWest Express, addressed the Wasatch County Planning Commission and presented a Power Point presentation and then indicated that all the necessary documentation has been provided and obtained the necessary permits and easements over the properties except the one remaining issue with regard to the imminent domain action which is the amount of money that will be paid for the right to cross that particular property. We also have what is called a stipulation of immediate occupancy on the Murdock property.

Commission Comments

Commissioner Mark Hendricks indicated that if all the matters and documentation have been taken care of I am ready to make a motion regarding this matter.

Public Comment

Chuck Zuercher then opened the Public Hearing for public comment and there was none and the public comment period was closed.

Motion

Commissioner Mark Hendricks made a motion that we approve the modification to the existing conditional use permit as requested by TransWest to re-route a section of this transmission line which is in light of the findings and subject to the conditions outlined in the staff report.

Commissioner Doug Grandquis seconded the motion.

The motion carries with the following vote:

AYE: Chair Chuck Zuercher, Doug Grandquis, Scott Brubaker, Kimberly Cook, Mark Hendricks, Karl McMillan, Wendell Rigby.

NAY: None.

ITEM 3 MJSAA, REPRESENTING ORION JORDANELLE HOLDINGS LLC, REQUESTS A PLAT AMENDMENT TO SHEETS 9-26 OF THE LODGE AT STILLWATER AMENDED AND RESTATED TO REDUCE THE NUMBER OF UNITS FROM 66 TO 60, INCREASE OVERALL SQUARE FOOTAGE BY 18,827.3 SQUARE FEET (+12,386.8 SF UNDERGROUND PARKING GARAGE,

+2,545.2 SF COMMON AREA, +3,015.9 PRIVATE OWNERSHIP, AND +879.4 SF CONVERTIBLE SPACE), AND TO ADJUST UNIT BOUNDARIES FOR COMPLIANCE TO ADA STANDARDS LOCATED AT 1364 STILLWATER DR. IN THE JORDANELLE BASIN OVERLAY ZONE (JBOZ). (DEV-6038; AUSTIN CORRY)

Staff

Austin Corry, Assistant Wasatch County Planner, addressed the Wasatch County Planning Commission and presented a Power Point presentation and then indicated that the applicant is seeking to amend The Lodge at Stillwater Amended and Restated subdivision plat for the purpose of modifying the platted, but unconstructed portions of the Stillwater Lodge. Also Wasatch County Code requires notice to be sent to all property owners within the plat, as well as property owners within 500 feet of the requested plat amendment. State Law requires a public hearing to amend any plat when the amendment is not signed by all the owners within the plat being amended. At the time the staff report was written no objections had been received in response to the notices sent, although a number of questions have been raised by residents in the existing built portions of the Lodge. Utah Code 17-27a-609 allows the County to approve a plat amendment if the County finds that: (a) there is good cause for the vacation, alteration, or amendment; and (b) no public-street, right-of-way or easement has been vacated or altered.

Also, the Wasatch County Code 16.04.02 has defined "good cause" as: *"providing positive benefits and mitigating negative impacts, determined on a case-by-case basis to include such things as: providing public amenities and benefits, resolving existing issues and non-conformities, addressing issues related to density, promoting excellent and sustainable design, utilizing best planning and design practices, preserving the character of the neighborhood and of Wasatch County and furthering the health, safety, and welfare of Wasatch County."*

Austin Corry indicated that the request is to amend the plat and what they are amending is the plat that covers the unbuilt portion of the building. There was a letter received from the Lodge at Stillwater Owner's Association that they are supportive of the changes to the building.

Austin Corry then went through the DRC Comments:

JORDANELLE SSD comments:

- Prior to JSSD plat signature, we will require an approved change app from the State for the water to be used for the project. The water must then be conveyed and dedicated to JSSD.

PLANNING comments:

- Final plat recording will be subject to verification from the Water Board that the changes to square footage were presented and approved by the Board.

RECORDER comments:

- Looks good to me.

Austin Corry then went through the proposed findings for approval.

1. The subject property is part of the Hailstone Village Master Development that includes 12 development pods with uses and density identified in the master plan.
2. The subject property is POD 10 of the Hailstone Village master plan and is 5.86 acres.
3. The existing plat contains 151 condominium units.
4. The first half of the condominium building has been constructed and includes 85 units.
5. The proposed amendment reduces the number of unconstructed units from 66 to 60, resulting in a total 145 unit condominium building.
6. The proposed amendment adds an additional 12,386.8 square feet of underground parking, 2,545 square feet of common area, 3,015 square feet of private ownership and 879.4 square feet of convertible space.
7. The proposed amendment indicates that building height remains the same and that the increased parking garage level is going farther underground.
8. The increased footprint remains within the developable parcel on the existing plat and modifies the outdoor common area of the association.

9. No changes are being made to the built portion with the exception of minor adjustments in common areas where the new construction would tie into the existing building.
10. A Site Plan application will still be required for the architecture and parking verification.
11. Condominium plats are subject to UCA Section 57-8 and will require approval from the Condominium Association.
12. No public or private roads are being vacated as part of this plat amendment.
13. Based on the current zoning designation and its associated regulations, the applicant would forfeit the right to re-create the six units being dissolved in this proposal.
14. This proposed revision conforms to the Wasatch County development standards.
15. The Development Review Committee has reviewed the project and forwarded the item to the Planning Commission for decision.
16. The proposal is consistent with Utah Code Section 17-27a-609 requirement to find good cause in that the changes to the units resolves issues of non-conformity with current ADAAG requirements for accessible clearances and increasing parking availability for the project as a whole.

Austin Corry then went through the proposed conditions:

1. Prior to JSSD plat signature, an approved change application from the state for the water to be used for the project is required. The water must then be conveyed and dedicated to JSSD.
2. Final plat recording will be subject to verification from the Water Board that the changes to square footage were presented and approved by the Board.
3. The plat amendment is subject to expiration deadlines as noted in Wasatch County Code 16.01.16.

Austin Corry then went through the proposed findings for denial:

1. The subject property is part of the Hailstone Village Master Development that includes 12 development pods with uses and density identified in the master plan.
2. The subject property is POD 10 of the Hailstone Village master plan and is 5.86 acres.
3. The existing plat contains 151 condominium units.
4. The first half of the condominium building has been constructed and includes 85 units.
5. The proposed amendment reduces the number of unconstructed units from 66 to 60, resulting in a total 145 unit condominium building.
6. The proposed amendment adds an additional 12,386.8 square feet of underground parking, 2,545 square feet of common area, 3,015 square feet of private ownership and 879.4 square feet of convertible space.
7. The proposed amendment indicates that building height remains the same and that the increased parking garage level is going farther underground.
8. The increased footprint remains within the developable parcel on the existing plat and modifies the outdoor common area of the association.
9. No changes are being made to the built portion with the exception of minor adjustments in common areas where the new construction would tie in to the existing building.
10. A Site Plan application will still be required for the architecture and parking verification.
11. Condominium plats are subject to UCA Section 57-8 and will require approval from the Condominium Association.
12. No public or private roads are being vacated as part of this plat amendment.
13. Based on the current zoning designation and its associated regulations, the applicant would forfeit the right to re-create the six units being dissolved in this proposal.
14. This proposed revision conforms to the Wasatch County development standards.
15. The Development Review Committee has reviewed the project and forwarded the item to the Planning Commission for decision.
16. The Planning Commission is unable to make a finding of good cause as required by Utah Code Section 17-27a-609 in order to approve a plat amendment.

Commission Comments

Commissioner Mark Hendricks asked if the lot line is being changed. Austin Corry replied that it changes the footprint of the building and everything that is surrounding the building is the common area. The HOA has to represent in the common area and they have to have those agreements and the HOA has to sign the plat. Jon Woodard, Deputy Wasatch County Attorney, replied that it is a 66 percent sign off and then the HOA can do it. It can be less by the declaration of the HOA.

Applicant

Kathleen Hill, with MJSA representing Orion Jordanelle addressed the Wasatch County Planning Commission and then presented a Power Point presentation and then indicated that what we are asking to amend is:

1. The unit counts shall be reduced from 66 units to 60 units. This will be accomplished by combining smaller units into larger units. While the area of the condo units is slightly larger, the actual footprint of the structure has not changed. All units are less than 1500 square feet. The purpose is that the original units were too small and were uncomfortable for the typical users.
2. The top floor units with vaulted ceilings were given additional square footage. There are no units that are over 1500 square feet. The purpose is that capturing the previously existing volume increases the best use of the space available.
3. Also, to comply with current ADA code (additional clearances were required within the units), current sound control standards, and current building envelope insulation requirements, each unit realized a slight increase in size. This increase has not, however, increased any unit over the 1500 square foot threshold. The purpose is to comply with current ADA standards, sound control standards, and current energy code requirements.
4. Also, thirty-three additional underground parking stalls were provided by adding a level of parking underground. The purpose is to increase parking availability.

Kathleen Hill indicated that the density that this provides particularly at this time with development that is going in at the Mayflower there is a sizeable amount of density within this development by allowing this to go forward for these buildings to be built that weren't built twenty years ago but it is well timed and it is needful for the community. It has been very well done and MJSA has worked very hard with Orion and Orion has worked very hard to make sure that they have secured and met all of the allowances and provisions. We have worked with Utah State on the water exchange. They have purchased irrigation water and made that exchange so all of the water that they need for this project is in place. We hope that you will give it serious consideration for the positive. Also it will all be the same HOA as the existing buildings. Also to meet current code insulation for the building and ADA compliance within the units themselves and within the building, the building just needed a little bit more space. We are just trying to provide something that will be beautiful.

Public Comment

Chair Chuck Zuercher then opened the public hearing for public comment.

John Haney, President of the Hailstone at Stillwater HOA, addressed the Wasatch County Planning Commission and indicated that my concerns are: the first concern is due to parking on the street. Removal of the snow on the road. Parking on the sides of the street. Safety concerns for people to pass on the road especially emergency vehicles. Concern of the additional depth for the parking garage raises a concern about the stability of the hillside. John Haney also presented some additional e-mails to be made a part of the record by individuals with concerns.

Pam Ford, resident and living on Stillwater Drive, addressed the Wasatch County Planning Commission and indicated that she is concerned about the width of the road. Also concerned about ADA compliance with no sidewalk.

Michael Kosakowski, former President of the Stillwater HOA, addressed the Wasatch County Planning Commission and asked if this is a condo hotel and Kathleen Hill replied this is a condominium. Is the parking lot across the street is that still being used by the project HOA. Kathleen replied that the Lodge at Stillwater had the easement for that parking. Flinders own that property and there is an easement that Stillwater has to use that property. Mike Kosakowski indicated the width of the street is made better by the use of that parking lot for recreational vehicles to park in. Also people who are parking on the street aren't people from the Stillwater. Our experience that the Stillwater can take care of those problems by the management of its property and associate properties so that is really not an issue. Also tried to work with the County for fifteen years now to make that a productive property. We would applaud any constructive development of this property which would help everybody and help the neighborhood and would help Wasatch County.

Richard Rapp, involved with Pod 11 that has the parking easement, addressed the Wasatch County Planning Commission and has a concern about this because of a project that I will be developing on that site with several clients. The parking issue with the lot has never been resolved to how much is really in that easement that was put forth back in 1999. What has been put forth with regard to parking in the lot is just not acceptable. Also not opposed to this development process. I oppose to them using that lot for their parking requirement if that is what is being represented.

Bruce Shapiro, attorney representing the Stillwater HOA, addressed the Wasatch County Planning Commission and indicated that the concern that the HOA has is that by requesting a change to the underground parking and we believe that all aspects of the parking should be reviewed to make sure that it complies with the good cause standard under the Wasatch County Code 16.04.02. The concern is the access and egress access to the parking structure on Stillwater Drive and will have negative impact on the Stillwater Subdivision. The access to this parking is no different than it was from the access to the old parcel. Kathleen Hill indicated that there are more stalls but there are less units. Bruce Shapiro indicated that before the parking is granted that should be reviewed prior to a decision.

Greg Griffin, owner of units in the Stillwater Lodge, has significant concerns about the approval of this plat amendment and one of the primary reasons is the showing of good cause and it has nothing to do with good cause other than to increase parking for a private developer who is going to own that parking space or increasing the unit size or the size of the building. Concerned about the size of the building and can't be justified only by a need for more insulation which would only be inches. The increase is 13,000 square feet and not 3,000 square feet. The common area is all owned by the individual owners and we have a right to it and by one owner who already has a platted unit to take that commercial space which should not be allowed. It impacts the voting rights of the association and what the declaration states is that if there is a change in the declaration it requires approval by all owners which would include me and every other owner. The board itself does not have a right to approve it but requires the approval of the members and did not receive any notice of a scheduled meeting or a vote to be able to vote on any changes to the building. This is a very complicated request because it ties the land rights of the association. Also who owns the land that the building is growing into and is owned by all the tenants, all the condominium owners jointly? Also in looking what the applicant has done to the plat is clearly designated as common areas and those common areas are owned by the rights afforded to the individual homeowners in the declaration. There are multiple things in our declaration that need to be coordinated. There are also multiple votes that need to occur and that you guys should do two things and you need to look at each component of their proposed changes and is there good cause for this. The plat amendment needs to be looked at in detail and have the County Attorney review what the declaration says and what rights the owners of these already platted units can really do on approval, compensation and legal changes to our declaration. I have submitted multiple objections to the Wasatch County Planning Department to look at. There is no good cause in this but to increase their saleable square footage.

James and Tara Vaught, owner of Unit 16 of the Hailstone at Stillwater, addressed the Wasatch County Planning Commission and have a concern that these changes should be looked at and evaluated to make sure that the changes that they are saying is actually what the changes that have already been done. We need to have more time to look at these things that is being asked for.

Dawn Rawls Valentine, owner of Unit 6, addressed the Wasatch County Planning Commission and indicated that she agrees with what has been said by others. When things change you have to look at how it changes everything around it. There has been a lot of objections to what is being proposed. There is not enough parking for the lodge as it exists now. We need more time to look at this proposal.

Chair Chuck Zuercher then closed the public comment period.

Commission Discussion

Commissioner Mark Hendricks indicated that the amount of traffic isn't going to change right? Kathleen Hill replied that is correct, it is the same as it was twenty years ago. Also there is no condominium owners because they haven't been sold so there are no individual owners in those units and until they all have individual owners there is no homeowners that are being affected by this request.

Chair Chuck Zuercher asked who maintains those roads and Austin Corry replied that Wasatch County does. Kathleen Hill indicated that there is the HOA for the Lodge at Stillwater which right now are buildings one, two and three because buildings four and five haven't been built yet. They do have a single owner - the developer. The new buildings are all going to be part of the same HOA. Sixty units are effectively owned and under construction to be built and then all sixty units will be sold and will all be part of the Stillwater HOA. Right now those units don't exist and so the individual owners of those sixty units don't exist.

Commissioner Scott Brubaker asked how the original plat and the common area was that used to sell the original condominiums. Kathleen Hill indicated that was twenty years ago. It was all one plat. Commissioner Scott Brubaker indicated that the common areas on that plat would be common areas for anyone whoever buys a unit in that area? Jon Woodard, Deputy Wasatch County Attorney, indicated that would depend on the declarations as to who has the right to amend common area. The State Code indicates that you have to have sixty-seven percent to change the common area which can be amended by the declaration and

would have to know what the declaration says in that regard of who has ownership. Commissioner Scott Brubaker indicated he likes the project. The HOA has very strict rules on what can be done.

Commissioner Mark Hendricks indicated that the declaration can say a lot of things but there is a high amount of probability that the units that don't exist don't have a vote. There is an impact on those who do have a claim on the common area and whether this adversely impacts that somehow. We have got people that have sent written evidence and who have given us their oral testimony as well that they didn't agree with the HOA. On the other hand you have got a letter reportedly from the HOA saying that we go along with this project which puts us in the middle of a HOA separate dispute. The question is and we don't really know, what would have made this a really tight application is if I am the applicant, I am the declarant or am the developer to provide evidence that I have enough control and this is how the HOA has voted. If we had that back up we wouldn't be having this discussion. Kathleen Hill indicated that the common areas that are being changed into convertible space are and we have taken common areas and made them to benefit the tenants. We also have the letter from the HOA and tell me what else we need to provide.

Commissioner Mark Hendricks indicated that he doesn't know if the developer has the voice in the decision and the individual owners don't have that decision to make. Kathleen Hill indicated that we can produce that documentation very quickly regarding who has the voice to make that decision. We need to have the appropriate documentation to say that if we approve this project the individuals in the HOA and the developer have the appropriate voice to vote one way or the other.

Jon Woodard, Deputy Wasatch County Attorney, indicated that we are hearing two different sides here which will throw me into the role of deciding who is right and I can't do that. Kathleen Hill indicated that with what has been said and being the developer does own the majority shares of the HOA which can be easily documented.

Commissioner Hendricks indicated that he is leaning towards a continuation and we don't need a whole new presentation. I think this will be solved pretty straight forward. Let me outline why I think there is good cause. I think good cause exists because first and foremost the addition of additional parking without what I regard is a material change in the envelope is a very strong plus for the project. Another element is that there are less units. They are also larger units and willing to accept the representations that the increase in size and I understand the commercial aspects of it and those are fine and I don't think there is a negative side to wanting a better product from a commercial perspective. I also think there is a plus of having the space to be more ADA compliant to attenuate sound, so have thicker walls for energy, allowance for improving the energy efficiency and those are all pluses to the product. It is represented to us that the size on a per unit basis isn't exceeding 1500 square feet. I do understand people's concern about parking complications and all of that and I don't think our agreement to approve the change changes that one way or the other. There are parking implications to the project as approved. There is incremental problem with the amendment and I personally don't see any. For those reasons being my key reasons I feel like there is good cause and would be inclined to approve this, however, I have reservations that we don't really have a rock solid understanding in line of the conflicting testimony about adequate HOA approval which is a requirement of this statute. Jon Woodard, Deputy County Attorney, indicated that it might not even be HOA approval it depends on how the declarations are set.

Commissioner Kimberly Cook indicated that she feels like we need to have all of the information and don't want to vote yes or no tonight and want to continue it and want to make the decision with all of the facts.

Commissioner Scott Brubaker indicated that he agrees with what the Commissioners have said.

Kathleen Hill asked that other than the letter from the HOA that says that they approve it and what is it that we are needing to provide in addition to that?

Jon Woodard, Deputy Wasatch County Attorney, indicated that we need to give anybody who is interested a chance to opine on what is allowed to be changed by the declaration and under what rules are in place and how those have been met.

Commissioner Mark Hendricks indicated that what you need is not just a one sentence letter that says we approve and we have enough voting rights but is more of a comprehensive analysis that says this is what the declaration says. This is why we think we can do this and why we are not violating law. You should do this soon because there has be an opportunity for others to weigh in. You need to get a letter out to everybody so that people can't say that we didn't know and we didn't understand. We have the authority and we have a copy of the language from the declaration and here is the letter I sent out to everybody and this is the time I gave them to respond and this is the response that I got. You are going to know very quickly whether somebody doesn't like it which doesn't carry the day. If you walk somebody through that and give us that this person doesn't like it and we are not going to weigh on the legal thing. If it gets too messy we will probably not be in a position to decide. It puts the pressure on the

owner/developer to say I can do this and I am right doing it. Kathleen Hill indicated that information can be obtained pretty quickly.

Doug Smith, the Wasatch County Planner, indicated that needs to be done before the next hearing because the public hearing has been closed. Kathleen Hill indicated that the other option of course is that there is no plat amendment and buildings four and five can get constructed. I think it is important that everybody understands that this isn't going away and these two buildings have been approved twenty years ago, including the access for the parking and they are getting built. If we can't jump through all these hoops, the developer says that we are just going to build what was originally approved and the buildings are still going up. The Planning Commission indicated that we agree that you have a better product.

Motion

Commissioner Scott Brubaker made a motion that we continue this item until the next meeting.

Commissioner Kimberly Cook seconded the motion.

The motion carries with the following vote:

AYE: Chair Chuck Zuercher, Scott Brubaker, Kimberly Cook, Doug Grandquis, Mark Hendricks, Karl McMillan, Wendell Rigby.

NAY: None.

The information raised during public comment regarding concerns of violations to the declaration need further information for the Planning Commission to feel comfortable rendering a decision.

ITEM 4 BERG ENGINEERING, REPRESENTING LAKE CREEK FARMS HOLDINGS LLC, REQUESTS PRELIMINARY SUBDIVISION APPROVAL FOR SAHALE SUBDIVISION, A PROPOSED RESIDENTIAL SUBDIVISION CONSISTING OF 123 LOTS ON 239.78 ACRES PREVIOUSLY INCLUDED AS THE FINAL PHASES OF THE LAKE CREEK FARMS SUBDIVISION LOCATED AT APPROXIMATELY 2000 SOUTH 4200 EAST IN THE RESIDENTIAL AGRICULTURE 1 (RA-1) ZONE. **IF FORWARDED, THE RECOMMENDATION BY THE PLANNING COMMISSION ON THIS ITEM WILL BE CONSIDERED BY THE COUNTY COUNCIL AS THE LAND USE AUTHORITY, AT A PUBLIC HEARING ON AUGUST 17, 2022. (DEV-5001; AUSTIN CORRY)*

Staff

Austin Corry, Assistant Wasatch County Planner, addressed the Wasatch County Planning Commission and presented a Power Point presentation and then indicated that this proposal is for a new preliminary plan for 128 lots on 239.78 acres of property under the existing Residential Agriculture 1 (RA-1) zoning designation. If preliminary approval is granted for this new proposed Sahale Subdivision, the Lake Creek Farms preliminary plan would be considered to have abandoned the remaining phases. There is an old Pioneer Cemetery that is being preserved. One of the key items that I wanted to mention to you and this is something that requires a Council approval and has more discretion to it than a standard preliminary subdivision but with this subdivision is a request to realign an adopted local road plan. The request is to realign from the Bardall LLC property and the location is not being moved at that point but everything from there on they are asking for that realignment to go through. They want to bring the alignment through the project and where they actually own the property here they can make their connection at Center Creek and avoid the two homes on Center Creek road. The connections on the north and south would remain where they are on the master roads plan but they are deviating through the project area.

Austin Corry then went through the proposed findings:

1. The subject property is 239.78 acres located on the east end of the Heber Valley floor.
2. The property currently has a preliminary entitlement under the Lake Creek Farms subdivision for 90 lots ranging from 1 to 3 acres.
3. The proposal is to abandon the Lake Creek Farms remaining preliminary entitlement and seek a new preliminary subdivision entitlement for 128 lots.
4. The property is located in the Residential Agriculture 1 (RA-1) zone.

March 6, 2024

Orion Jordanelle Property Holdings, LLC
PO Box 13308 Jackson, Wyoming
83002

Mr. Justin Martin,

This letter is in regards to Wasatch County Business License application 24-10. Orion Jordanelle Property Holdings, LLC has requested a business license for the leasing of commercial space at the Stillwater Lodge, located at 1364 West Stillwater Drive. According to the applicant, the proposed commercial will be a 3,548 square foot restaurant, a 3,427 square foot private ski club, and a renewal of an existing 1,080 square foot retail space. The projected square footage of commercial space, all together, comes to 8,055 square feet. Utilizing the Parking Matrix found in Wasatch County Code §16.33.13, the proposed restaurant would require 36 parking stalls, the proposed private ski club would require 35 parking stalls, and the current commercial retail requires 6 parking stalls, totaling 77 parking stalls required for Uses and square footages requested in the Business License application. The applicant has stated (Exhibit A) that there is a parking easement for the benefit of Super Pad No. 10 on Super Pad Parcel No. 11, and that the parking easement should satisfy all required parking for Super Pad Parcel No. 10.

Referencing the most recent site plan approval granted for the Lodge, and if the renewal of the Business License for Adventure Haus is granted, the current parking for the Lodge on Super Pad Parcel No. 10 is as follows:

10A (85 units constructed) = 85 parking stalls

10A current employee parking = 15 parking stalls

10B/C (60 units under construction) = 60 parking stalls

2,186 square feet assembly area = 11 parking stalls

1,080 square feet of retail space (Adventure Haus) = 6 parking stalls

Total: 177 parking stalls

Plans included in the site plan approval currently under construction shows a total of 178 parking stalls exclusively in the underground parking garages after reconstruction in the existing garage occurs to reclaim some stalls that had been repurposed previously. This number of parking stalls is sufficient¹ for the current required parking for Super pad Parcel No. 10 including Adventure Haus, with one parking stall remaining for future commercial uses for Super Pad Parcel No. 10. At the time of the 2023 site plan approval, it was noted in the staff report to the Planning

¹ Note that this evaluation assumes the existence of the parking and uses as approved in the 2023 site plan approval. A future approval might include as a condition the actual and continued existence of the parking and uses from that 2023 approval.

Commission that “The applicant states there is an off-site parking easement that could also serve the project, but has not provided any evidence as to the scope or determination of what that easement entails. As such, the County is not making any determination as to the existence of such an easement.” It is assumed by the County that this application for a business license is requesting that the County make the determination that was deferred to the applications that would trigger parking review for the Commercial Uses of the Lodge beyond the existing Adventure Haus. If that is the case, it is expected that the applicant will provide sufficient evidence to demonstrate the scope of the parking easement to ensure that adequate parking is being provided by the applicant to support the requested Commercial Uses for which the business license application is being made for.

As part of the Business License application, a letter dated January 31, 2024 (“Letter”) was provided outlining your position of the existence of a parking easement. The Letter does not indicate the number of parking stalls that the parking easement would create, but instead suggests that the easement is a free-floating right to whatever parking becomes necessary as approvals are granted for the Lodge. I have read the Letter that was provided and reviewed some of the record for recent approvals for the project, including public comment given at an August 11, 2022 Planning Commission meeting for a plat amendment approval, and including heavy discussion regarding findings and conditions during a site plan approval on June 8, 2023. I have not been able to come to the same definitive conclusion as the Letter in the business license application claims.

It is important to note that during the June 8, 2023 Planning Commission hearing, concerns from the public were expressed related to parking. One particular statement from Richard Rapp, a developer of Pod 11 from that meeting states, “I will be developing on that site with several clients. The parking issue with the lot has never been resolved to how much is really in that easement that was put forth back in 1999. What has been put forth with regard to parking in the lot is just not acceptable. Also not opposed to this development process. I oppose to them using that lot for their parking requirement if that is what is being represented.” This differing of understanding among the stakeholders of interest in Super Pad Parcel No. 11 is not insignificant.

Attached as Exhibit D is a letter from the County Attorney’s office that outlines its concerns with the evidence provided and referenced in the Exhibit A letter in proving access to adequate parking on Super Pad Parcel No. 11. Please provide additional information regarding the number of parking stalls that would be available on Super Pad Parcel No. 11 through the parking easement. This could be demonstrated through various means, including an agreement by the owner of Super Pad Parcel No. 11 on the status of the parking easement, a court order, or evidence of a recorded document that sufficiently establishes the rights and obligations of Super Pad Parcel No. 11 and Super Pad Parcel No. 10 in regards to the necessary parking for this business license.

According to the Master Plan (Entry # 222528) Site Data Table, Super Pad Parcel No. 11 has 17,900 square feet of projected commercial space (Exhibit B) and the parking currently built on Pod 11 appears to be consistent with providing for the building pads provided on the Master Plan. These commercial spaces would require, at minimum, 90 parking stalls on Super Pad

Parcel No. 11. According to the Master Plan, there are approximately one hundred (100) parking stalls, and that is including the undeveloped portion of Super Pad Parcel No. 11. This suggests that the currently constructed parking on Super Pad Parcel No. 11 is not yet built to accommodate all the anticipated uses.

In other comments from the ownership interest of Super Pad Parcel No. 11, it has been suggested by them that the parking easement was only intended to allow for 15 stalls being encumbered. As we can see, there is a significant gap in the available stalls and the parking requirements for all projected uses on Super Pads 10 and 11. I believe the need to reconcile this gap is something you are interested in, and the County shares that interest with you in ensuring accurate rights are protected. As I'm sure you can appreciate, having a clear record of those rights will help to prevent future disputes.

There is also an issue with the Business License application regarding Uses and where those may be located within the Stillwater Lodge (Super Pad Parcel No. 10). The application has made no attempt to identify where the square footages relates, or which units the license is being applied for in reference to the existing condominium Plat (Entry # 234502). Please provide information on where these projected Commercial Uses will be in relation to the condominium Plat. There is a significant discrepancy between the Business License application of 8,055 square feet being requested for licensing and the 7,494 square feet of commercial space cited in the Letter in referencing the Amended Master Declarations. Adding together the labelled "convertible space 3" areas from the Plat totals 7,371.1 square feet. Because of this, it is unclear how these are expected to be reconciled. No floor plans were provided with the application for the various uses and the application is unclear.

In conclusion, I do not have enough information to approve this Business License application at this time. If you can provide sufficient evidence to support the scope of the parking easement, where within Super Pad Parcel No. 10 that the Uses are/will be located, and verification of accurate square footages in compliance with the approved plat and applicable code requirements, I will be able to provide an approval.

Sincerely,



Nathan Rosvall

Wasatch County Planning Department

35 South 500 East

Heber, Utah 84032

(435)657-3205

Exhibit D – Square footage of the commercial portion of the lodge

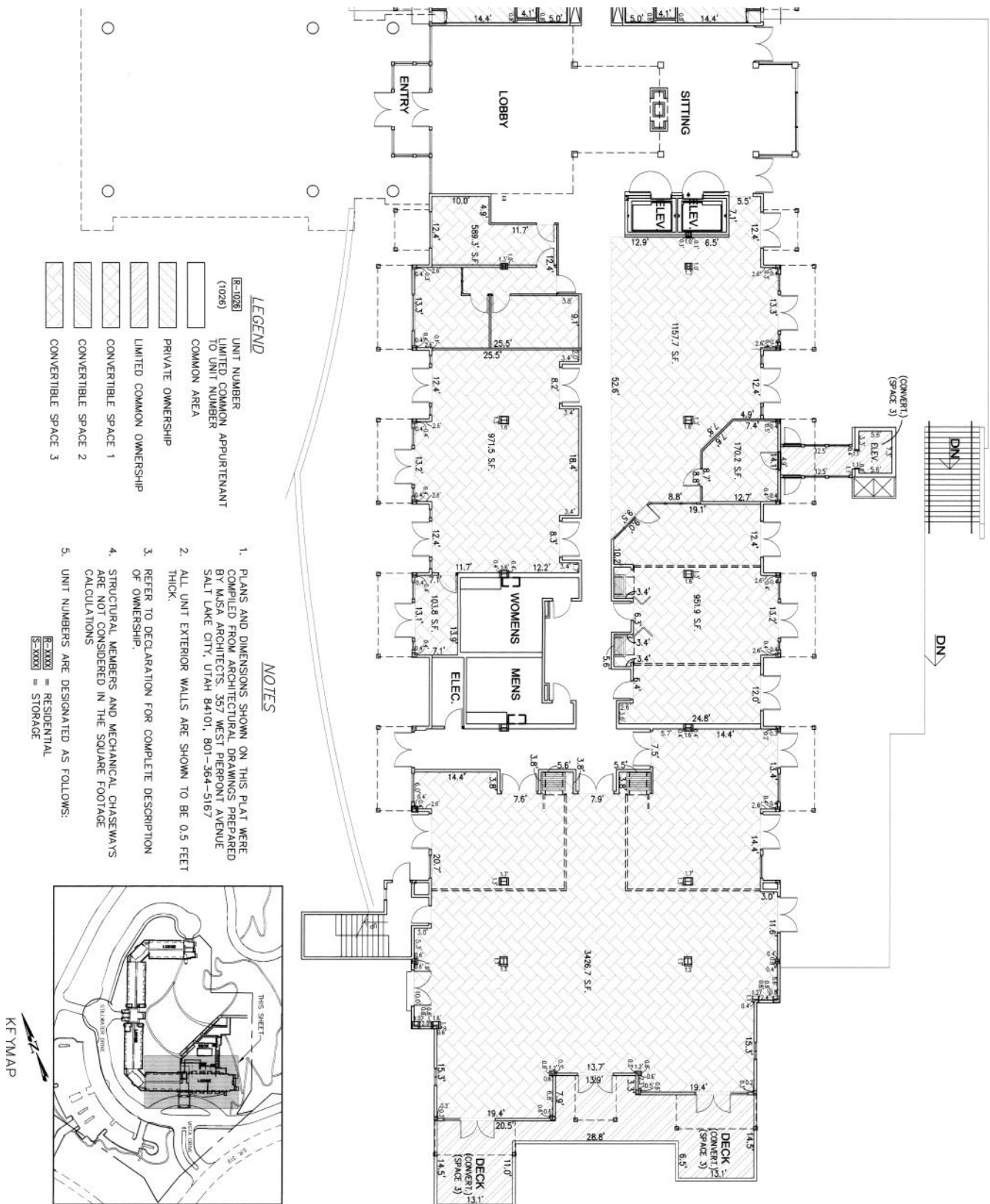
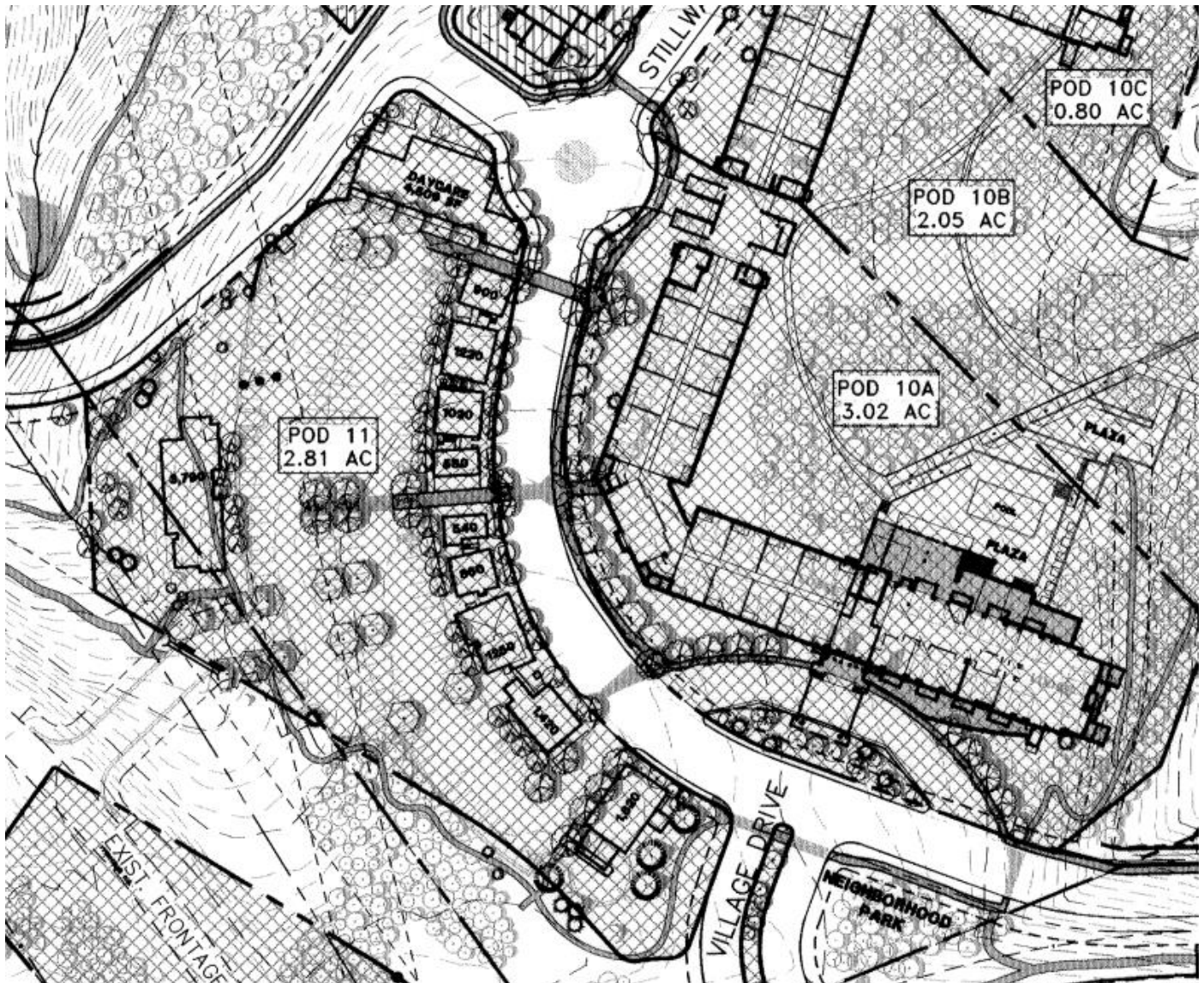




Exhibit F – Pod 11 location and approved square footage



POD 11

COMMERCIAL S.F.	17,900	7.70	2.81
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Ent 482835 Bk 1307 Pg 488 – 497
PEGGY FOY SULSER, Recorder
WASATCH COUNTY CORPORATION
2020 Aug 17 12:03PM Fee: \$40.00 TC
For: Helgesen Houtz & Jones
ELECTRONICALLY RECORDED

Notification of Parking Easement

Attached hereto as Exhibit "A" is a copy of an "Interim Parking Agreement" ("Agreement") entered into between The Lodge at Stillwater Owners Association, Inc. ("Association") and the Flinders group of Super Pad Parcel No. 11 property owners. Paragraph number 10 of the Agreement authorizes the Agreement to be Recorded in the Wasatch County Recorder's office. (Parcel No. 00-0020-3979)

As authorized by the Agreement and with the approval of the Association's management committee, the Association presents this Agreement for recording against Super Pad Parcel No. 11, which real property is located in Wasatch County, Utah, and more particularly described in Exhibit "B", attached hereto.

Dated this 13th day of August, 2020

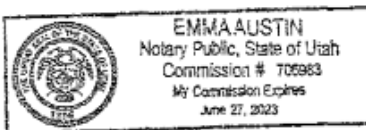
The Lodge at Stillwater Owners Association, Inc.
A Utah Nonprofit Corporation

By: 

Its: Management Committee Member

State of Utah)
 :ss
County of Utah)

On the 13th day of August, 2020, personally appeared before me, Brad L. Jones, the signer of the above instrument who duly acknowledged to me that he executed the same in behalf of The Lodge at Stillwater Owners Association.




Notary Public

EXHIBIT “A”

INTERIM PARKING AGREEMENT

This Interim Parking Agreement (Agreement) is entered into this ____ day of March, 2018, (the Effective Date) between The Lodge at Stillwater Owners Association, Inc. (the Lodge), and G. Melvin Flinders, Sandra Flinders, Matthew L. Oman and Jamie L. Oman (collectively Flinders).

RECITALS

WHEREAS, Flinders is the owner of Super Pad Parcel No. 11 (Pad 11), located in Wasatch County, Utah, within the project known as the Stillwater Development; and

WHEREAS, the members of the Lodge own units and common area within a portion of the Stillwater Development known as the Lodge at Stillwater. The Association is managed by the Association's board of directors who are responsible to act in behalf of the owners of units at the Lodge at Stillwater; and

WHEREAS, Pad 11 and the Lodge at Stillwater are subject to the provisions of the Amended and Restated Master Declaration of Covenants, Conditions and Restrictions for Stillwater (Master Covenants), recorded in Wasatch County on November 5, 2003, as Entry No. 264939; and

WHEREAS, Article 6.3.2 of the Master Covenants provides, in part:

In addition, an easement for shared parking on Super Pad Parcel No. 11 is hereby reserved for the benefit of the mixed-use Commercial and Residential condominium project that Stillwater Lodge has or will construct on Super Pad Parcel No. 10, as further described in that certain Declaration of Condominium defined in Recital H above. Such shared parking easement exists in order to permit the project known as The Lodge at Stillwater to meet applicable parking requirements as set forth in the Development Documents.

(the Parking Easement);

WHEREAS, a parking lot presently exists on Pad 11 (the Parking Lot); and

WHEREAS, the Parties disagree concerning their respective rights and obligations with respect to the Parking Easement; and

WHEREAS, although discussions to date have not yielded a resolution, the Parties have agreed to continue discussions and wish to avoid any misunderstanding or controversy concerning the Parking Lot during the discussion period; and

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WHEREAS, the Parties agree it makes sense to enter a temporary agreement regarding use of the Parking Lot that will allow the Parties time to explore development possibilities for their properties, and their associated parking needs, before further addressing their disagreement.

AGREEMENT

1. **Term.** As of the Effective Date, this Agreement shall supersede the prior interim agreement between the Parties, confirmed in a December 26, 2017, email from counsel for the Lodge, and shall be in effect through April 30, 2019 (the Interim Period).

2. **Parking.** During the Interim Period, subject to the restrictions set forth in the Master Declaration, members, tenants and guests of the Lodge may park in the existing Parking Lot located on Pad 11. Flinders or Flinders' guests, successors, and invitees shall continue to use the Parking Lot on the same basis.

a. Parking Enforcement and Towing. During the Interim Period, the Lodge shall be responsible for enforcing compliance with the parking restrictions contained in the Master Declaration by all lawful means, including the towing of vehicles parked in violation of the Master Declaration or this Agreement. Flinders agrees not to have vehicles towed from the Parking Lot. If Flinders becomes aware of a vehicle parked in the Parking Lot that is in violation of the Master Declaration's parking restrictions, Flinders may provide notice to the Lodge, which will be responsible for requiring compliance in accordance with this paragraph. Notice under this paragraph shall be given in writing (including email), by phone call, or by text message to:

Kier Property Management
Tom Hart
Tom@kiermanagement.com
801-866-1408

b. Signage. Flinders removed "No Parking" signs that were previously posted in the Parking Lot and agrees that during the Interim Period, Flinders will not replace those signs or post any new parking signs in the Parking Lot. During the Interim Period, the Lodge may post those parking signs in the Parking Lot necessary to inform the public and members of the Lodge of the restrictions contained in the Master Declaration.

3. **Maintenance.** During the Interim Period, the Lodge shall provide for and manage the maintenance needs of the Parking Lot and pay the expenses and costs associated with such maintenance. Maintenance shall include snow removal, weed control, trash removal and general cleanup, repair of cracks or pot holes, and lighting (which shall be optional at the Lodge's discretion). The Lodge shall perform all Maintenance in a manner reasonably designed to prevent additional damage to the Parking Lot. Major repairs or maintenance such as seal coating or installing additional asphalt shall only be done upon advance written approval from Flinders.

4. **Liability.** The Lodge shall be responsible for and indemnify Flinders against any damage, claim, injury, cause of action or loss that occurs in connection with the Parking Lot during the Interim Period, whether the claim is brought during that Interim Period or after. The Association

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shall add Flinders as additional insureds on the Lodge's liability insurance policy for the duration of the Interim Period, which policy shall have limits of not less than \$1,000,000.

5. **Termination.** This Agreement shall terminate in the event the Lodge files a lawsuit seeking to adjudicate the scope of the Parking Easement prior to the expiration of the Interim Period.

6. **Cooperation.** During the Interim Period, the Parties shall reasonably and timely cooperate to keep one another apprised of their respective development plans and parking needs. It is anticipated the Parties shall do so directly without attorney involvement.

7. **Successors.** This Agreement shall be binding on the Parties' successors.

8. **Assignment.** This Agreement is not assignable.

9. **Waiver.** This Agreement is made without waiver of any Party's rights, arguments, or claims.

10. **Recording.** This Agreement may be recorded in the Wasatch County Recorder's office.

11. **Counterparts and Facsimile Signatures.** This Agreement may be executed in counterparts, each of which when executed and delivered shall be deemed to be an original, binding between the executing parties, and all of which together constitute one and the same instrument. Original, facsimile, or power of attorney signatures shall be binding upon the executing party.

IN WITNESS WHEREOF, the parties have executed this Agreement, to take effective as of the Effective Date.

DATED this ___ day of March, 2018

THE LODGE AT STILLWATER OWNERS
ASSOCIATION

 3/16/18
Dan Beveloqua
President

DATED this ___ day of March, 2018

G. Melvin Flinders

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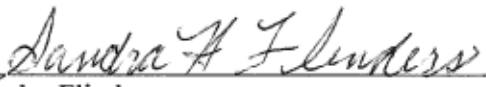
THE LODGE AT STILLWATER OWNERS
ASSOCIATION

Dan Beveloqua
President

DATED this __ day of March, 2018

G. Melvin Flinders
G. Melvin Flinders

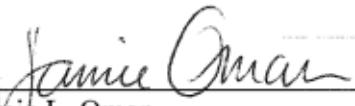
DATED this ___ day of March, 2018


Sandra Flinders

DATED this ___ day of March, 2018

Matthew L. Oman

DATED this ___ day of March, 2018


Jamie L. Oman

DATED this __ day of March, 2018

Sandra Flinders
Sandra Flinders

DATED this __ day of March, 2018

Matthew L. Oman
Matthew L. Oman

DATED this __ day of March, 2018

Jamie L. Oman
Jamie L. Oman

EXHIBIT "B"

Super Pad Parcel No. 11
(Parcel No. 00-0020-3979)

Pod 11:

Part of the parcel of land described in that certain "A.L.T.A Survey, Park City Hotels, Inc., Jordanelle Parcel", prepared by the Jack Johnson Company, Job No. 083 .018, Dated 07/31/98, lying within the Southeast Quarter of Section 24, Township 2 South, Range 4 East, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at a point on the Southwesterly right-of-way line of proposed H.S. Rodeo Road, which point is 1545.83 feet North 89°58'47" West along the Section line and 1349.21 feet North 00°01' 13" East from the monument found marking the Southeast corner of said Section, said point being on a 145 .00 foot radius curve to the left (radius point bears North 21°04'33" \West), and running thence Northeasterly 53.09 feet along said Southwesterly right-of-way line and the arc of said curve through a central angle of 20°58'47" (chord bears North 58°26'03" East 52.80 feet) to a tangent line; thence North 47°56'39" East 135.52 feet along said tangent line and said Southwesterly right-of-way line to a point of tangency with a 175 .00 foot radius curve to the left; thence Northeasterly 37.31 feet along the arc of said curve and said Southwesterly right-of-way line through a central angle of 12°12'52" (chord bears North 41°51'13" East 37.24 feet) to a tangent line; thence North 35°43'47" East 74.43 feet along said tangent line and said Southwesterly right-of-way line to a point of tangency with a 15.00 foot radius curve to the right; thence Easterly 23.56 feet along the arc of said curve through a central angle of 90°00'00" (chord bears North 80°43'47" East 21.21 feet) to a tangent line and a point on the Southwesterly right-of-way line of proposed Bareback Road; thence South 54 °16'13" East 55.90 feet along said tangent line and said Southwesterly right-of-way line to a point of tangency with a 15.00 foot radius curve to the right; thence Southeasterly 14.73 feet along the arc of said curve and said Southwesterly right-of-way line through a central angle of 56°15'04" (chord bears South 26°08'41" East 14.14 feet) to a point of reverse curvature with a 57 .00 foot radius curve to the left; thence Southeasterly 47.12 feet along the arc of said curve and said Southwesterly right-of-way line through a central angle of 47°57'45" (chord bears South 22°00'02" East 46.33 feet) to a point of reverse curvature with a 15.00 foot radius curve to the right; thence Southeasterly 14. 73 feet along the arc of said curve through a central angle of 56°15'04" (chord bears South 17°51 '23" East 14.14 feet) to a point on the Westerly right-of-way line of proposed Hailstone Road and a tangent line; thence South 10°16'09" West 100.42 feet along said tangent line and said Westerly right-of-way line to a point of tangency with a 275.00 foot radius curve to the left; thence Southeasterly 260.70 feet along the arc of said curve and said Westerly right-of-way line through a central angle of 75°09'06" (chord bears South 27°18'24" East 335.40 feet) to a point of reverse curvature with a 15.00 foot radius curve to the right; thence Southeasterly 22.23 feet along the arc of said curve through a central angle of 84 °55'49" (chord bears South 22°25'02" East 20.25 feet) to a tangent line and a point on the Northwesterly right-of-way line of proposed Village Road; thence South 20°02'53" West 83.23 feet along said tangent line and said Northwesterly right-of-way line to a point of tangency with a 15.00 foot radius curve to the right ; thence Southwesterly 18. 16 feet along the arc of said curve through a central angle of 69°23'00" (chord bears South 54°44'23" West 17.07 feel) to a point on the Northerly right-of-way line of proposed Jordanelle Round and a point of reverse curvature with a 127.00 foot radius curve to the left; thence Westerly 21.98 feet along the arc of said curve and said Northerly right-of-way line through a central angle of 09°55'05" (chord bears South 84°28'20" West 21.96 feet) to a point of reverse curvature with a 15.00 foot radius curve to the right; thence Northwesterly 15.22 feet along the arc of said curve through a central angle of 58°07'05" (chord bears North

71°25'39" West 14 .57 feet) to a point on the Northeasterly right-of-way line of proposed Jordanelle Parkway and a tangent line; thence North 42°22'06" West 45.07 feet along said tangent line and said Northeasterly right-of-way line to a point of tangency with a 360.00 foot radius curve to the left; thence Northwesterly 102.97 feet along the arc of said curve and said Northeasterly right-of-way line through a central angle of 16°23'16" (chord bears North 50°33'44" West 102.62 feet) to a tangent line; thence North 58°45'22" West 301 .03 feet along said tangent line and Northeasterly right-of-way line; thence North 02°46'37" West 138.38 feet to the point of beginning. Contains 2.77 acres, more or less.

Together with the following described parcel:

Part of the parcel of land described in that certain "A.L.T.A. Survey, Park City Hotels, Inc., Jordanelle Parcel", prepared by the Jack Johnson Company, Job No. 083.018, Dated 07/31/98, lying within the Southeast Quarter of Section 24, Township 2 South, Range 4 East, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at a point on the Northerly right-of-way line of State Road 319, as shown on said survey, which point is 1074.14 feet North 89°58'47" West along the Section line and 912.64 feet North 00°01'13" East from the monument found marking the Southeast corner of said Section, said point being on the southwest corner of a proposed median strip, and running thence along said median strip and the right of way line of Village Road the following nine (9) courses: North 26°33'08" West 1.43 feet to the point of curvature with a 106.50 foot radius curve to the right; and (2) Northerly 86.62 feet along the arc of said curve through a central angle of 46°36'01" (chord bears North 03°15'08" West 84.25 feet) to a tangent line; and (3) North 20°02'53" East 49.31 feet to a point of curvature with a 5.00 foot radius curve to the right; and (4) Northeasterly 7.85 feet along the arc of said curve through a central angle of 90°00'00" (chord bears North 65°02'53" East 7.07 feet) to a tangent line; and (5) South 69°57'07" East 3.00 feet to a point of curvature with a 5.00 foot radius curve to the right; and (6) Southeasterly 7.85 feet along the arc of said curve through a central angle of 90°00'00" (chord bears South 24°57'07" East 7.07 feet) to a tangent line; and (7) South 20°02'53" West 49 .31 feet to a point of curvature with a 93.50 foot radius curve to the left; and (8) Southerly 76.05 feet along the arc of said curve through a central angle of 46°36'01" (chord bears South 03°15'08" East 73.97 feet) to a tangent line; and (9) South 26°33'08" East 2.34 feet to the said Northerly right of way line of State Road 319; thence South 67°26'43" West 13.03 feet along said line to the point of beginning. Contains 0.04 acres, more or less.

6.3.2 Easements for Parking. Temporary Guest or recreational parking shall be permitted within the Common Elements only within spaces and areas clearly marked for this purpose. Signs or markings on the paved area shall show spaces. The Master Association is hereby empowered to establish "parking" and "no parking" areas within the Common Elements, as well as to enforce these parking limitations by all means lawful for such enforcement including the removal of any violating vehicle by those so empowered. In addition, an easement for shared parking on Super Pad Parcel No. 11 is hereby reserved for the benefit of the mixed-use Commercial and Residential condominium project that Stillwater Lodge has or will construct on Super Pad Parcel No. 10, as further described in that certain Declaration of Condominium defined in Recital H above. Such shared parking easement exists in order to permit the project known as The Lodge at Stillwater to meet applicable parking requirements as set forth in the Development Documents. As set forth in the Declaration of Condominium, Super Pad

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10/29/2003

Parcels Nos. 10B and 10C (which constitute portions of Super Pad Parcel No. 10) are subject to Stillwater Lodge's right to withdraw. Declarant hereby reserves the right, for the benefit of Super Pad Parcel No. 11, to abandon and terminate such shared parking easement encumbering Super Pad Parcel No. 11 in the event Stillwater Lodge exercises its right to withdraw Super Pad Parcel Nos. 10B or 10C, thereby vacating the need for such additional parking requirements as set forth in the Development Documents. The Master Association may specifically assess the Neighborhood Association for The Lodge at Stillwater for the benefit of such Neighborhood Association, if any, or the Owners of Commercial Space to be constructed on Super Pad Parcel No. 11, for its allocable share of maintaining, repairing and replacing the parking areas used by such Neighborhood Association pursuant to this provision, including without limitation its share of the costs associated with lighting and snow removal.

Exhibit I – Denied Business License

	Wasatch County	
	Clerk's Office	
	25 N Main St. Heber City, UT 84032	
	(435) 657-3190	
	APPLICATION FOR BUSINESS LICENSE	

Application #	24-10
Business License #	
License Fee:	50.00
Beer License Fee:	
Penalty Fee:	
Total Fees:	50.00

Applicant Information		
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Full Name: Martin Justin		Date: Jan 31, 2024
Last	First	M.I.
Address: PO Box 13308		
Street Address		Apartment/Unit #
Jackson	WY	83002
City	State	ZIP Code
Phone: 917-455-9959	E-mail Address: justin.martin@orion-companies.com	

Business Information		
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Business Name: Orion Jordanelle Property Holdings, LLC		
Address of Business: 1364 Stillwater Drive, Heber City, Utah 84032		
Mailing Address: PO Box 13308		
Street Address		Apartment/Unit #
Jackson	WY	83002
City	State	ZIP Code

I/We hereby apply to conduct the business of landlord/owner of commercial space leased/sold to others for the period of one year from the approval date and under the provisions of Wasatch County's ordinances governing business licenses.

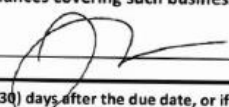
Briefly describe the day-to-day operations of your business: Owner and manager of the commercial area within the Lodge at Stillwater (aka the Mason), that currently leases out a retail space (ski and outdoor rentals) and further intends to lease or sell space for the operation of a restaurant and ski locker outfit.

Is this a Home Occupation?	Yes ☐ No ☒	New Business?	Yes ☐ No ☒	New Building?	Yes ☐ No ☒
New Location?	Yes ☐ No ☒	New Owner?	Yes ☐ No ☒		

Alarm System Responsible Party:	Doug Jepperson, Property Manger	Alarm Contact Phone #:	866-552-7823
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Utah State Sales Tax #:	exempt*	Utah State Professional License #:	N/A	Utah State Tobacco Sales #:	N/A
*re-sale or re-lease		Utah State Transient Room Tax #:	N/A		

I/We are familiar with the Ordinances under which this license is applied for and hereby agree to conduct said business strictly in accordance with the Laws and Ordinances covering such business. This application is subject to approval of the Wasatch County Manager.

Signature:  Date: Jan 31, 2024

If the License fee is not paid thirty (30) days after the due date, or if the license is not obtained prior to opening of the business, a penalty of 25% will be added for delinquency.

MAKE ALL CHECKS PAYABLE TO WASATCH COUNTY.

KIRTON | McCONKIE

Daniel Dansie
50 E. South Temple
Salt Lake City, UT 84111
ddansie@kmclaw.com
801.321.4839

January 31, 2024

Via Email Only

Wasatch County Planning Department
Doug Smith, Director
Austin Corry, Senior Planner
35 S. 500 E.
Heber City, Utah 84032
dsmith@wasatch.utah.gov
acorry@wasatch.utah.gov

Dustin Grabau, County Manager
25 N. Main Street
Heber City, Utah 84032
dgrabau@wasatch.utah.gov

Wasatch County Attorney’s Office
Jon Woodard, Deputy County Attorney
805 W. 100 S.
Heber City, Utah 84032
jwoodard@wasatch.utah.gov

**Re: Lodge at Stillwater Commercial Parcel
Parking Requirements and Easement**

Gentlemen:

This law firm represents Orion Jordanelle Property Holdings, LLC, a Delaware limited liability company (“**Owner**”). The Lodge at Stillwater (“**Lodge**”) is located at approximately 1364 W. Stillwater Dr., Heber City, Utah. Owner holds title to certain subdivided parcels within the Lodge, which is now also known as “The Mason” for marketing purposes. The purpose of this letter is to respond to concerns previously raised by Wasatch County regarding the adequacy of parking for the certain parcels (“**Commercial Parcels**”) within the Lodge on which Owner, or an assignee or successor of Owner, may operate commercial activities.

Parking for the Commercial Parcels is possible under the Lodge’s right to use neighboring property known as “Super Pad Parcel No. 11” for parking. Owner is providing the information in this letter to Wasatch County (“**County**”) to confirm the existence of adequate parking for the Commercial Parcels on Super Pad Parcel No. 11.

SALT LAKE CITY, UT | LEHI, UT | ST. GEORGE, UT | BOISE, ID | KMCLAW.COM
4882-2213-1872

As set forth in more detail below, the *Amended and Restated Master Declaration of Covenants, Conditions and Restrictions for Stillwater* (“**Amended Master Declaration**”) reserves a parking easement on Super Pad Parcel No. 11 for the benefit of the Lodge on Super Pad Parcel No. 10 (“**Parking Easement**”). The Parking Easement provides sufficient parking for the Lodge to meet the County’s parking requirements—including parking for the Commercial Parcels. In fact, the explicit purpose of the Parking Easement is to allow the Lodge to have adequate parking.

Background

The following information is provided as background and context for the analysis of the scope of the Parking Easement. From the outset of the Stillwater master project (“**Project**”), it was anticipated that at least a portion of Super Pad Parcel No. 11 would be used as parking for the benefit of Super Pad Parcel No. 10 (the Lodge is located on Super Pad Parcel No. 10). For that reason, the Amended Master Declaration reserved the Parking Easement in favor of Super Pad Parcel No. 10 specifically to enable the Lodge to meet the County’s parking requirements.

Project

The Project is a large-scale, mixed-use development initially consisting of twelve (12) separate parcels. The *Master Declaration of Covenants, Conditions and Restrictions for Stillwater*, recorded on or about March 14, 2000, initially established the Parking Easement in favor of the Lodge. An amended and restated version of the master declaration for the Project, the Amended Master Declaration, was recorded on or about November 5, 2003, as Entry No. 264939. The Amended Master Declaration preserved the Parking Easement in favor of the Lodge.

The Project’s parcel naming convention is found in Section 1.65 of the Amended Master Declaration, which designates each of the twelve parcels of the Project as a “Super Pad Parcel” with an associated number. Super Pad Parcel No. 10, as it happens, is further divided into Super Pad Parcel Nos. 10A, 10B, and 10C.

The Amended Master Declaration also sets out the various Super Pad Parcels’ intended uses, which informs the various parcels’ mutual obligations and expectations, such as for shared parking burdens. Section 2.2.10 describes Super Pad Parcel No. 10 as follows:

[A] multi-story mixed-use Commercial and Residential condominium project utilizing a total of 62.73 ERUs. Super Pad Parcel No. 10 may have up to 151 Residential Units, Commercial Units for retail shops, restaurants, gift shops and other Commercial uses, up to 7,494 square feet of Commercial Space for meeting rooms and similar Commercial support areas, and an underground parking garage containing approximately 151 parking spaces.

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Parking Easement

With the various Super Pad Parcels' uses set, the Amended Master Declaration then reserves a parking easement on Super Pad Parcel No. 11 for the benefit of Super Pad Parcel No. 10. Section 6.3.2 of the Amended Master Declaration describes the reservation as follows:

[A]n easement for shared parking on Super Pad Parcel No. 11 is hereby reserved for the benefit of the mixed-use Commercial and Residential condominium project that Stillwater Lodge has or will construct on Super Pad Parcel No. 10 Such shared parking easement exists in order to permit [the Lodge] **to meet applicable parking requirements** as set forth in the Development Documents.

(Emphasis added.)

The term Development Documents is defined in Section 1.24 of the Amended Master Declaration as a collection of documents including the Final Approval, which itself is defined in Section 1.26 of the Amended Master Declaration as the final approval for the Lodge provided by the County, and the Master Plan for the Lodge, as defined in Section 1.35 of the Amended Master Declaration, as any of the foregoing "may be amended from time to time."

The Amended Master Declaration provided that Super Pad Parcel No. 10 would have up to 7,494 square feet of commercial space. Pursuant to the terms of the Amended Master Declaration and the Development Documents, portions of the Lodge have been used for commercial uses over the years. The relevant approvals for the Lodge have been amended several times since the Amended Master Declaration was recorded.

In short, the Amended Master Declaration reserves a parking easement on Super Pad Parcel No. 11 for the benefit of the Lodge on Super Pad Parcel No. 10. Although no specific number of parking spaces is mentioned, the express purpose of this reservation is to enable the Lodge "to meet applicable parking requirements set forth in" the various development documents applicable to the Project—however many parking spaces that may be, as determined by the County. In other words, the scope of the Parking Easement is flexible in scope and is defined by the parking needs required under the approvals applicable to Super Pad Parcel No. 10.

Analysis

Owner currently leases part of the Commercial Parcels for commercial use, and intends to operate, lease, or sell additional spaces for commercial uses in the Commercial Parcels within the Lodge. In addition, previous owners of property interests in the Lodge have leased and/or operated a restaurant and event space in the Commercial Parcels since its build-out and completion in or around 2007. As such, the Parking Easement provides for sufficient parking for such uses to meet the County's requirements.

Under the plain language of the Amended Master Declaration, the Parking Easement provides however many parking spaces required for the Lodge (i.e., Super Pad Parcel No. 10) to

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meet the parking requirements set forth in the master plan for the Project, the Stillwater Phase I Development Agreement, and the Final Approval for the Stillwater Project adopted by the County, as those documents are amended and new uses are introduced.

According to Wasatch County's Parking Computation Matrix (Section 16.33.13 of the Wasatch County Code), the following requirements exist for the uses contemplated for the Lodge:

Condo Hotel	1 space for every unit plus 1 unit for every 200 square feet of assembly area
Retail	1 space for each daytime employee plus 1 space for every 200 square feet of floor space
Restaurant	1 space for 100 square feet of floor space
Private Club	1 space for 100 square feet of floor space

The intent of the Parking Easement is to provide parking to permit the Lodge to meet the county's parking requirements. Therefore, even though the precise number of spaces included in the Parking Easement is not expressly stated in the Amended Master Declaration, it is clearly intended, implied and legally understood that once the County specifies the precise parking requirement, the Parking Easement will provide sufficient parking to permit the Lodge to meet that requirement. As a forward-looking document, the Amended Master Declaration did attempt to anticipate every possible parking scenario. Indeed, like the United States Constitution, which envisioned amendments to address events unforeseen or unanticipated by the founders, the Amended Master Declaration has sufficient flexibility to adapt to new circumstances and new parking needs that may arise when the County's approvals for the Lodge change.

As shown in the attached aerial of the extant parking on Super Pad Parcel No. 11, there is more than enough existing, paved, and painted parking to allow for the spaces anticipated to be required by the County under the applicable zoning for the Commercial Parcels. Further, Super Pad Parcel No. 11, which comprises approximately 2.8 acres, has additional undeveloped/unpaved areas on which additional parking could be constructed.

Moreover, as demonstrated by the attached photograph of a "No Public Parking" sign, it is clearly understood by the owners of Super Pad Parcel No. 11 that the Parking Easement exists and that the Lodge is entitled to use Super Pad Parcel No. 11 for parking purposes. Neither the aerial photo nor the image of the parking sign are intended to imply that parking is limited to the current location or current scope of the extant paved parking. Indeed, if additional parking is necessary, the Lodge would be within its right to develop the same or required that it be developed. Rather, these images demonstrate that the Parking Easement is a long established, uncontested appurtenance to Super Pad Parcel No. 11.

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Conclusion

The explicit intent of the Amended Master Declaration is to provide for a Parking Easement sufficient to meet the parking requirements applicable to the Lodge. There are no limitations or maximum numbers placed on the Parking Easement. The number of spaces granted by the Parking Easement is defined by approvals for Lodge received from the County. Further, the Owner is not obligated to seek specific approval from the owner of Super Pad Parcel No. 11 for the uses which Owner intends to make of the Lodge, including existing or contemplated commercial uses in the Commercial Parcels. To the extent there is not on-site parking sufficient to meet current or future County approvals, the Parking Easement provides that such parking will be available on Super Pad Parcel No. 11. Please confirm that this information satisfies the County's concerns relating to parking for the Commercial Parcels. Failure to do so will continue to adversely affect the Lodge and hinder future economic development of the Project, as well as the surrounding area.

Please contact me if you have any additional questions or comments about this matter.

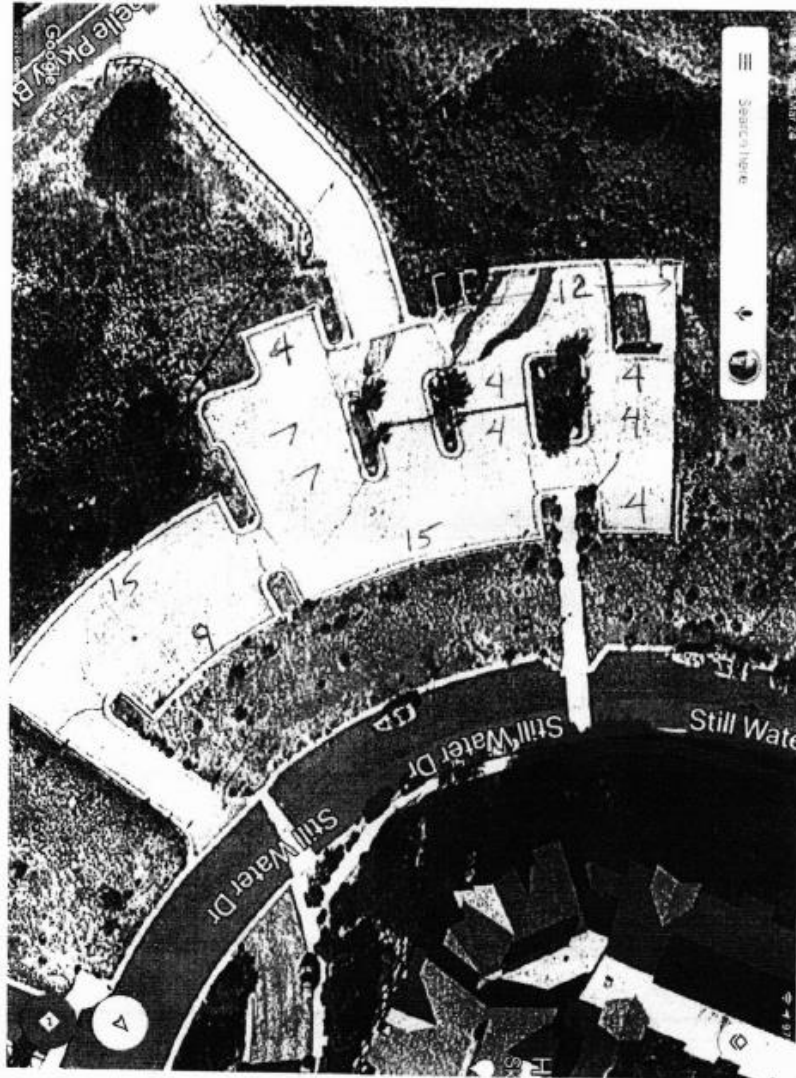
Warmest regards,

KIRTON McCONKIE

A handwritten signature in dark ink, appearing to read "Daniel Dansie", written in a cursive style.

Daniel Dansie

Enclosures



4882-2213-1872



4882-2213-1872



WASATCH COUNTY ATTORNEY

805 West 100 South
Heber City, Utah 84032
Telephone (435)654-2909
Facsimile (435) 654-2947

SCOTT H SWEAT
COUNTY ATTORNEY

MCKAY G KING
S. CASE WADE
JON WOODARD
MICHAEL A. SNELL
SHELBY M. THURGOOD
ALEX D. STOEDTER

March 6, 2024

Re: Evaluation of the January 31, 2024 letter from Mr. Dan Dansie regarding the *Lodge at Stillwater Commercial Parcel Parking Requirements and Easement*

Dear Planning Department:

In conjunction with a business license application, planning evaluates the application to verify that no zoning violations are known or apparently would be created by permitting the business. Orion has applied for a business license. A letter dated January 31, 2024 from Mr. Dan Dansie regarding the *Lodge at Stillwater Commercial Parcel Parking Requirements and Easement* ("Letter") was submitted with the application. The purpose of this memo is to evaluate that letter in the context of the pending business license application.

ORION POSITION

In the Letter, Orion Jordanelle Property Holdings, LLC ("Orion") takes the position that the Master Declaration ("Declaration"), Section 6.3.2, reserves a parking easement on Super Pad 11 for the benefit of Super Pad Parcel 10:

[A]n easement for shared parking on Super Pad Parcel No. 11 is hereby reserved for the benefit of the mixed-use Commercial and Residential condominium project that Stillwater Lodge has or will construct on Super Pad Parcel No. 10 Such shared parking easement exists in order to permit [the Lodge] to meet applicable parking requirements as set forth in the Development Documents. (Letter pg. 3)

Orion acknowledges that "the precise number of spaces included in the Parking Easement is not expressly stated in the Amended Master Declaration. . . ." (Letter pg. 4). Orion further acknowledges the parking easement, as stated in the Declaration, is "flexible in scope. . . ." (Letter pg. 3).

Orion offers various additional evidences of the existence of, and the scope of the easement. They point to Section 2.2.10 to show how the Declaration describes the uses on Super Pad 10. (Letter pg. 2). They cite the Wasatch County Code Section 16.33.13 as evidence for the number of stalls that would be sufficient to meet the parking requirements of Super Pad 10. (Letter pg. 4). They show an aerial photo of Super Pad 11 with numbers written on it, probably number of stalls, which they assert shows "there is more than enough existing paved and painted parking" on Super Pad 11 to meet the County requirements for the Commercial Parcels on Super Pad 10. (Letter pgs. 4, 6).

They further assert that Super Pad 11 has “additional undeveloped/ unpaved areas” that could be used for parking for Super Pad 10 (Letter pg. 4). They show a picture of an existing *No Parking* sign on Super Pad 11, and assert this as evidence that “it is clearly understood by the owners of Super Pad Parcel No. 11 that the Parking Easement exists. . . .” (Letter pgs. 4, 7).

While offering various evidences of the existence and scope of the easement, Orion asserts that it could require additional parking to be built on Super Pad 11, or “require that it be developed.” (Letter pg. 4). Ultimately, the Orion turns to the County as the entity that defines the scope of the parking easement:

“[The] express purpose of this reservation is to enable the Lodge ‘to meet applicable parking requirements set forth in’ the various development documents applicable to the Project—however many parking spaces that may be, as determined by the County.” (Letter pg. 3).

COUNTY LEGAL EVALUATION

On its face, it appears that the Amended Master Declaration could be used to create an express easement, and may have created a parking easement. *Kiernan Family Draper, LLC v. Hidden Valley Health Ctrs.*, 2021 UT 54, ¶ 41. Easements created by CCRs are generally interpreted using the same rules of construction used to interpret contracts. *Equine Holdings LLC v. Auburn Woods LLC*, 2021 UT App 14, ¶ 21.

Orion Jordanelle Property Holdings, LLC takes the position that “there are no limitations or maximum numbers placed on the Parking Easement.” (Letter pg. 5). Although the County evaluates compliance with the standards of applicable law in evaluating the business license, the result of Orion’s position is that whatever the County determines the parking requirement to be for the proposed business license, in addition to any other parking requirements for approved uses on Super Pad 10, that is added to, or inclusive of, the scope of Orion’s easement on Super Pad 11.

The number of spaces granted by the Parking Easement is defined by approvals for Lodge received from the County. (Letter pg. 5).

The Applicant bears the burden of proving compliance with the standards of the code. The County is not comfortable with Orion’s interpretation of the scope of the parking easement. Orion indicates that by the County taking a position on the parking standards required for a given application on Super Pad 10, by taking that position, the scope of an otherwise ambiguous parking easement against Super Pad 11 provides for adequate parking to accommodate the County’s position, whatever that position is. Orion’s position on the scope of the easement would place the County in the center of a dispute between Orion and anyone with an interest in Super Pad 11 that wanted to use the parcel in a manner that would conflict with Orion’s using the parcel for parking.

As shown in the letter from Planning that this letter is attached to, County records show persons with an interest in Super Pad 11 have questioned the easement as presented by Orion in the Letter, and previous approvals show that Super Pad 11 was previously approved to be used for more than simply providing parking for Super Pad 10. This appears to be at odds with Orion’s position that there are no limitations or maximum numbers placed on the Parking Easement burdening Super Pad 11. There are a number of challenges that might be asserted by a person interested in claiming that there was no parking easement burdening Super Pad 11, or that the scope of the parking

easement was more limited than that claimed by Orion. A non-exhaustive list of possible challenges include:

- Statute of Limitations causes no remedies for Orion. *Kiernan Family Draper, LLC v. Hidden Valley Health Ctrs.*, 2021 UT 54.
- Ambiguous express easement terms lead to the court interpreting the easement pursuant to the intention of the parties, which raises many possible factual issues which could be resolved by the court in unknown ways. *Equine Holdings LLC v. Auburn Woods LLC*, 2021 UT App 14.
- Mutual mistake is claimed in the express terms of the easement causing the court to consider whether it should reform the Declaration to reflect the intention of the parties, which raises many possible factual issues which could be resolved by the court in unknown ways. *Equine Holdings LLC v. Auburn Woods LLC*, 2021 UT App 14.
- Conduct over the years show that applying the express terms of the easement would substantially change the character of the neighborhood, leading the court to declare the easement terms unenforceable. *Swenson v. Erickson*, 2000 UT 16.
- Orion's position on the scope of the easement so completely burdens Super Pad 11, that the easement is void as a matter of law. *The View Condo. Owners Assn v. MSICO, L.L.C.*, 90 P.3d 1042 (overturned by *View Condo. Owners Assn v. MSICO, L.L.C.*, 2005 UT 91).
- By failing to indicate how many parking spaces are reserved, where they were to be located, and how much of the parcel is to be used for parking, that the easement is too vague to be enforced. *Holter Lakeshores Homeowners Ass'n v. Thurston*, 2009 MT 146, ¶ 25.

In making this evaluation, I am not taking a position on the merits of any of these possible claims, but I do take the position for the limited purpose of reviewing this business license application, that there are a number of possible legal challenges to Orion's position on the scope and existence of the parking easement that would probably not be deemed frivolous by the court, and could be at odds with Orion's position on the scope of the parking easement. Clarification of the existence and terms of the parking easement would be beneficial for the County in evaluating future development applications and business license applications involving Super Pads 10 and 11. They are also necessary to meet the applicant's burden of demonstrating adequate parking for the proposed businesses. This burden could be met in various ways, including through the courts, through a modification of the terms of the Declaration in accordance with applicable law, or perhaps through a written statement of the owner of Super Pad 11, agreeing to or authorizing the use of Super Pad 11 in a certain manner by the Owner(s) of Super Pad 10. Additional existing evidence defining the scope and existence of the easement might be provided that would be sufficient, but has not been submitted with the pending application. Parking might also be provided other ways not contemplated or demonstrated thus far.

For purposes of this business license application, I recommend that planning take the position that the applicant needs to provide additional evidence to support the right to utilize adequate parking for the proposed businesses on Super Pad 10.

/s/ Jon Woodard

Jon Woodard

Deputy County Attorney

*Exhibit L – “Development Documents” minutes of Planning Commission and
County Council final approvals*

2. Hailstone Village

Mark Sletten, the agent for Jordanelle Mayflower LLC (Hailstone Village), requests final approval for phase 1 which includes a hotel/condominium development located on the northeast side of the Mayflower interchange, on the way into the Jordanelle state park, and zoned Recreation Forestry.

Staff:

Al Mickelsen stated that this request is for a mixed use development but only requesting a review of phase 1 of the project at this time. This phase includes hotel rooms, condo units and commercial uses. They would like to re-locate the existing frontage road, but will have to address the property exchanges with BLM.

Concerns of the staff were regarding

1. Engineering issues - there were some questions but the review engineer has now given an OK for this phase.
2. Fire Safety- Fire Marshal has concerns about fighting fires & the proposed road system, he also feels a secondary road must be renovated.
3. Proposed street system - it is proposed that all streets within this development will be public.
4. Roundabout improvements - transportation consultant feels that the roundabout is needed to control traffic flow. The developer needs to address the issue of improvements on the roundabout before construction can proceed.
5. Minor Changes to Documents- documents provided need to be addressed. Any requested changes should be done prior to recording.
6. Section on Hailstone Road - the road is shown to belong to the State. It is important that this be approved by the State. Without this property the road system cannot work.
7. Snow Removal - County to do initial plowing with the understanding that hailstone will do the detail snow removal
8. Garbage Container location - Specific locations for the containers have not been identified, but cannot interfere with required off street parking and must be screened from view.
9. Off Street Parking - overall parking for Phase one will meet requirements, condo parking will be tandems.

Developer:

Mr Sletten, the developer, informed the Planning Commission that their name had been changed from Hailstone to Still Water and that they would work on resolving the issue outlined by the conditions.

Public:

Doug Murdick, questioned if the movement of fire trucks would be hampered trying to move around the roundabout, who would fund the medical and fire services, and the traffic in and out of the State Park.

Al Mickelsen responded that in order for the roundabout to be put on that site they would have to address and comply with any traffic movement studies. A full time fire service will be available by March of 2000 and paid for by assessment.

Planning Commission

Asked more questions about the conditions placed on them during the preliminary approval process regarding parking for residential and commercial use, the roundabout, road width, and snow removal and if all these issues had been resolved?

The Planning Commissioners were informed that the parking issues have been taken care of for this phase and that the development had down sized the number of units so they could provide 100% parking or 1 space per room as in the ordinance.

George Holmes asked that the developer have a copy of the conditions in the staff report, and label it as exhibit 'A', and that the traffic concerns be revisited with the other phases of the project.

Vicci Gappmayer made a motion to approve Stillwater (Hailstone Village) and recommend it to the County Commissioners with the proposed outlined conditions ('A' through 'F').

George Holmes seconded the motion.

The motion passes

motion was seconded by Commissioner Kohler and carried with the following vote:

AYE: Michael L. Kohler

LaRen Provost

NAY: Ralph Duke

Tom Case stated that he would like to withdraw his request for 30 days and be put back on the agenda pending meeting with the JBS. Commissioner Provost said the motion stood.

Hailstone/Stillwater Phase 1 – Final

Al Mickelsen presented the Hailstone/Stillwater Phase 1 for final approval. This is located in Area "A" by the Mayflower Interchange and is a mixed use consisting of hotel rooms, condo units, and commercial uses. The Planning Commission recommended approval subject to the following conditions:

1. Resolve the requirement for the roundabout improvement before the recording of the plat.
2. Conform to the engineering requirement as recommended by the Review Engineer.
3. Complete all changes to the documents associated with the development prior to recording the plat.
4. Resolve fire access and turnaround issues with the Wasatch County Fire Marshall prior to recording the plat.
5. Receive approval from the State pertaining to landscaping and access onto the State's property prior to the recording of the plat.
6. Locate garbage disposal facility in an area that does not affect any of the required off street parking.
7. Revisit the Planning Offices concern with other phases of their project.

Mr. Mickelsen stated that a property trade with the Bureau of Reclamation is necessary in order to meet the roundabout requirements and suggested revisiting that issue after the land trade is resolved. Concerns with fire access, engineering technical issues, landscaping, off street parking, and traffic issues have been addressed and will be completed before the plat is recorded. Sam Allen asked how many ERU's would be there, and Mr. Mickelsen replied 209. Mark Sletten, Jennifer Sletten, Joe Tesch, Commissioner Duke, Commissioner Provost, and Paul Taggart addressed the issue of how the Jordanelle project would be funded. It was understood that the property owners would be responsible for any costs. **Commissioner Duke made a motion to give final approval to Hailstone/Stillwater Phase I with the understanding that the Jordanelle Parkway and roundabout will be funded by the developers in the area, and also conditions are to be met before final recording. The motion was seconded by Commissioner Provost and carried with the following vote:**

AYE: Michael L. Kohler

LaRen Provost

Ralph Duke

NAY: None



Exhibit N - Convertible Space 3' areas of the existing Lodge At Stillwater Amended Plat (Entry # 234502)



Highlighted totals: 7371.1 square feet